

United States
Circuit Court of Appeals

For the Ninth Circuit.

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FRANK A. DOUGHERTY,

Appellant,

vs.

JOHN V. LEWIS, Former Collector of Internal
Revenue for the First District of California,
Appellee.

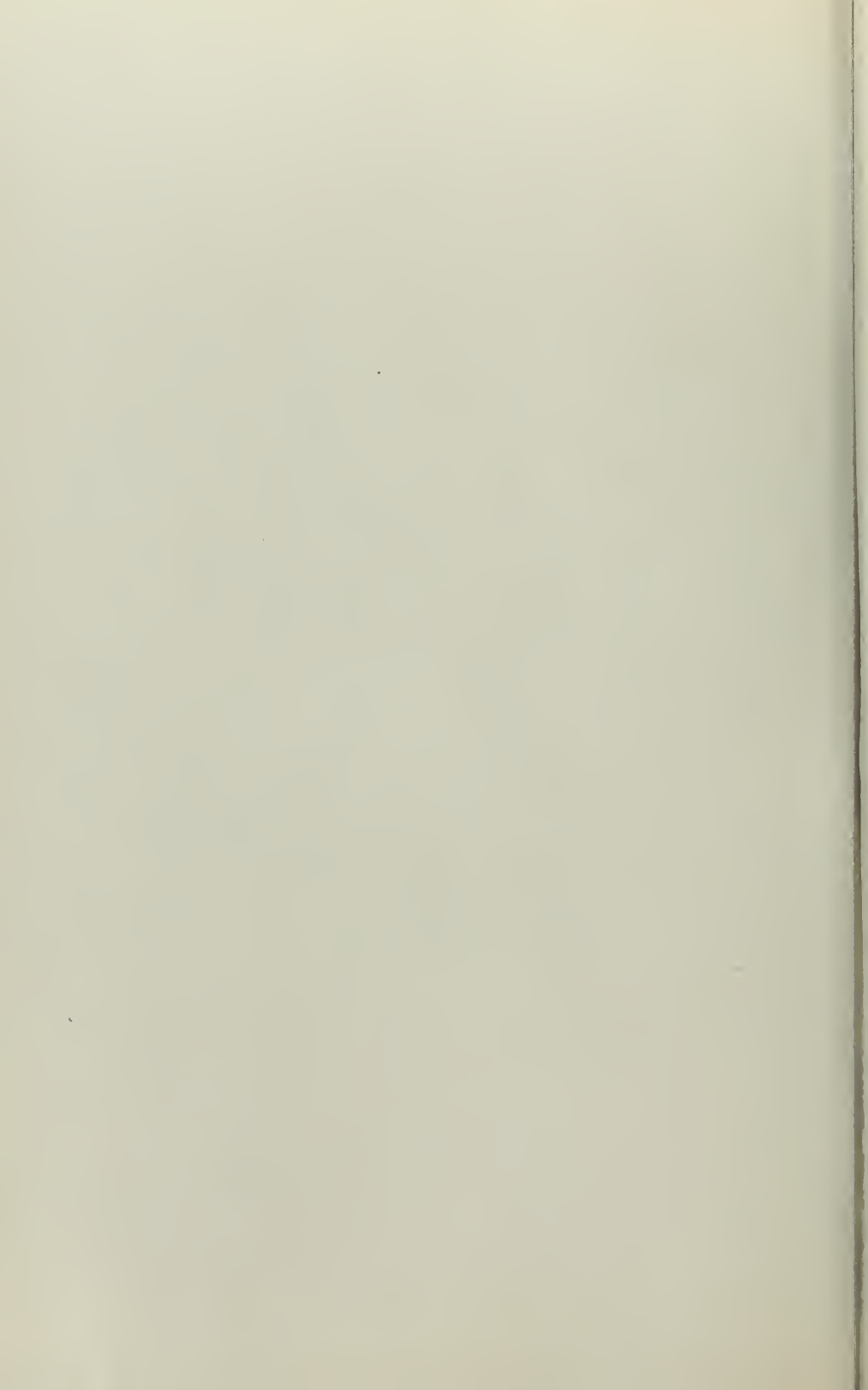
Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Southern Division.

FILED

MAY 7 1910

PAUL P. O'BRIEN,
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

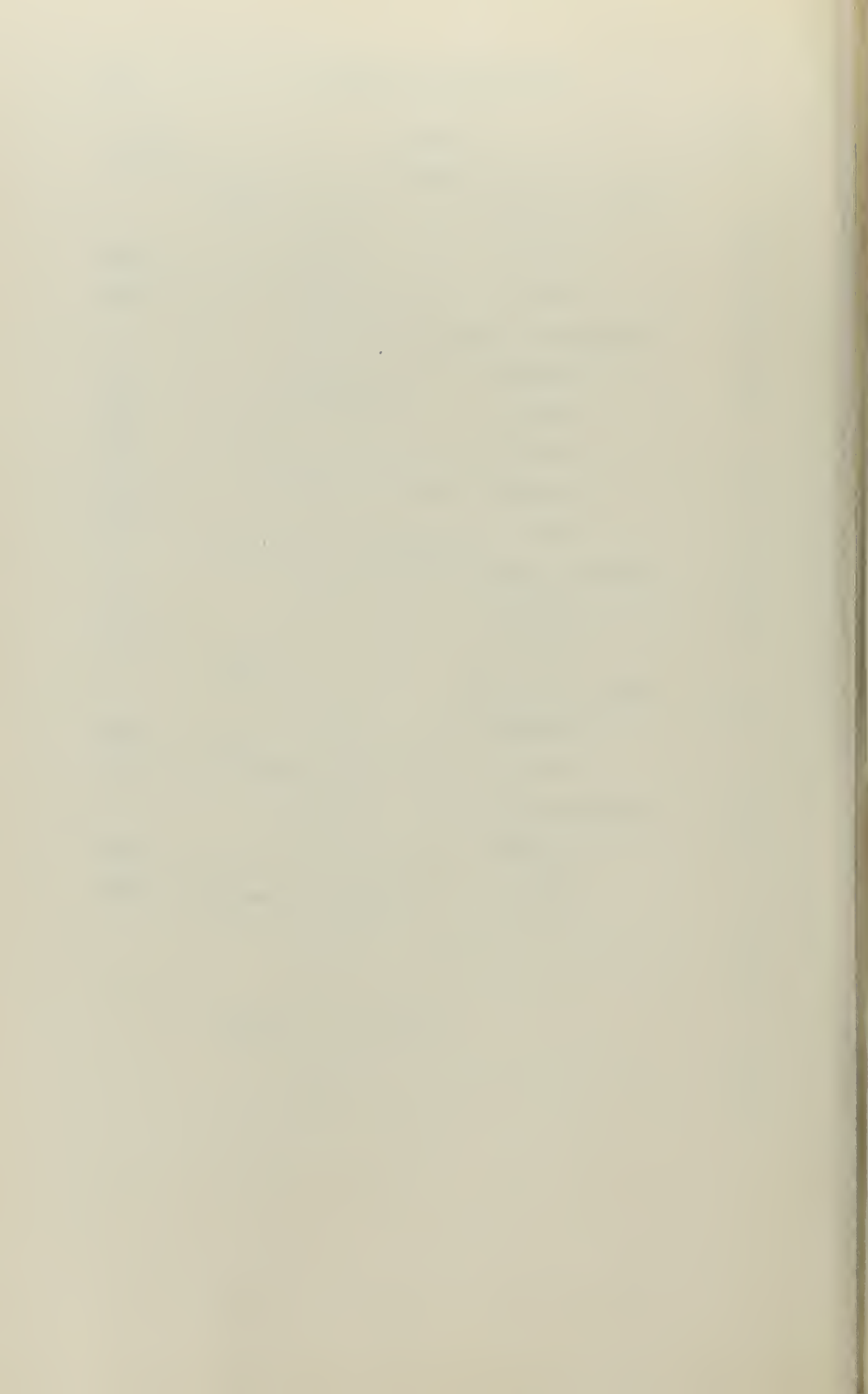
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Attorney for Defendant and Appellee.

—————

In the Southern Division of the United States
District Court, for the Northern District of
California.

No. 20425 R

Dept.....

FRANK A. DOUGHERTY,

Plaintiff,

vs.

JOHN V. LEWIS, former Collector of Internal
Revenue for the First District of California,
Defendant.

COMPLAINT

Plaintiff above named complains of defendant
above named and for his cause of action alleges as
follows:

I.

That this is a case arising under the laws providing for Internal Revenue, viz., it is an action brought against a former Collector of Internal Revenue by virtue of Sections 3220 and 3226 of the Revised Statutes of the United States, being Sections 1670, 1672 and 1673 of Title 26, U.S.C.A., to recover taxes and interest erroneously or illegally assessed or collected.

II.

That at all of the times herein mentioned plaintiff was and is a citizen of the State of California, a resident of the First Internal District therein and of the Southern Division of the [1*] United States District Court, in and for the Northern District of California.

III.

That at all the times herein mentioned, the defendant was the duly appointed, qualified and acting Collector of United States Internal Revenue for the First District of California in the State of California and in the Southern Division of the Northern District of California, save and except that prior to the filing of this complaint, said defendant resigned as said Collector of United States Internal Revenue for the First District of California.

IV.

That said defendant is a resident of the Southern Division of the United States District Court, in and for the Northern District of California.

*Page numbering appearing at foot of page of original certified transcript of Record.

V.

That the said defendant heretofore and on January 15th, 1936, assessed against said plaintiff and others, internal revenue taxes in the sum of \$7,773.60 representing taxes on 9,700.8 gallons of distilled spirits, 2,916 proof gallons of alcohol contained in mash.

VI.

That thereafter, and on October 5th, 1936, a warrant of distraint having been issued by defendant against plaintiff, plaintiff entered into an agreement with the defendant whereby moneys coming into the possession of the Spreckles Sugar Company of Salinas, California, as the result of the sale of the 1936 sugar beet crop of plaintiff be turned over to the Collector of Internal Revenue, plaintiff reserving in said agreement that the paying to said defendant of said moneys was under protest and without the waiver in plaintiff to sue for the recovery of such moneys and without admitting any tax liability.

VII.

That in August, 1937, pursuant to said warrant of distraint, [2] and pursuant to said agreement referred to in paragraph VI there was collected by said defendant from the Spreckles Sugar Company at Salinas, California, the sum of \$3,557.83 which moneys were the property of plaintiff.

VIII.

That thereafter, and on November 5th, 1937, plaintiff filed with and presented to the defendant a claim for refund of the moneys paid as hereinabove set forth and for abatement of the balance of said taxes assessed.

IX.

That thereafter, and on March 2nd, 1938, the Commissioner of Internal Revenue of the Treasury Department of the United States rejected said claim for refund and abatement; a copy of said claim for refund and abatement and a copy of said notice of rejection are hereto attached and marked, Exhibits "A" and "B", respectively.

X.

That plaintiff is informed and believes, and therefore alleges on such information and belief that the assessment of the Internal Revenue tax as hereinabove referred to was levied against plaintiff under the provisions of Sections 3251 Revised Statutes of the United States, which provides in substance, that every proprietor or possessor of, and every person in any manner interested in the use of any still, distillery or distilling apparatus shall be jointly and severally liable for the tax imposed by law on the distilled spirits produced therefrom and under the provisions of Section 3248 of the Revised Statutes, which provides that such tax shall attach to the operation whether in the mash or separated by distillation.

XI.

That plaintiff is informed and believes, and upon such information and belief alleges that said assessment of internal [3] revenue tax, as herein set forth, was assessed against plaintiff by defendant upon the theory that plaintiff was a proprietor or possessor of, and a person interested in the use of a distillery seized on a part of a ranch situated in the County of Monterey, State of California, on June 3rd, 1935, by agents of the Alcoholic Tax Unit of the Bureau of Internal Revenue.

XII.

That plaintiff alleges that he was not and never had been the proprietor or possessor of said still seized as set forth in paragraph XI, nor was he a person in any manner interested in the use of such still, or distillery or distilling apparatus, and that the said portion of said ranch upon which said still, distillery and distilling apparatus was seized was not the property of said plaintiff, nor was such property under his control or jurisdiction and that he did not in any manner have any interest in the use of such still, distillery or distilling apparatus, and that he was not and is not liable for the internal revenue taxes assessed against him as set forth in paragraph V hereof.

XIII.

Plaintiff alleges that the sum of \$3,557.83 seized and collected by defendant from plaintiff, as alleged

in paragraph VII hereof, was wrongfully and erroneously seized and collected by defendant for the reason that plaintiff was not liable for the internal revenue taxes assessed against him as set forth in paragraph V hereof.

Wherefore, because of the premises, plaintiff prays that he have judgment against defendant for the sum of \$3,557.83, interest thereon, as provided by law, costs of suit herein and such other relief as may be proper and just.

FRANK A. DOUGHERTY

Plaintiff.

FAULKNER & O'CONNOR

Attorneys for Plaintiff. [4]

Northern District of California

State of California

County of Monterey—ss.

Frank A. Dougherty, being first duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters stated therein on information and belief and as to those matters he believes it to be true.

FRANK A. DOUGHERTY

Subscribed and sworn to before me this 14th day of April, 1938.

[Seal]

MARGERY PALMTAG

Notary Public in and for the County of Monterey,
State of California. [5]

EXHIBIT A

Claim

To Be Filed With the Collector Where Assessment
Was Made or Tax Paid

The Collector will indicate in the block below the
kind of claim filed, and fill in the certificate on the
reverse side.

Collector's Stamp
(Date received)
Received
Nov 26 1937

- Refund of Tax Illegally Collected.
- Refund of Amount Paid for Stamps Un-
used, or Used in Error or Excess.
- Abatement or Tax Assessed (not applicable
to estate or income taxes).

State of California
County of Monterey—ss:

Name of taxpayer or purchaser of stamps Frank
A. Dougherty.

Business address (Street) Rt. 1, Box 292, (City)
Salinas, (State) California.

Residence.....

The deponent, being duly sworn according to law,
deposes and says that this statement is made on
behalf of the taxpayer named, and that the facts
given below are true and complete:

1. District in which return (if any) was filed San Francisco, California. November, 34.

2. Period (if for income tax, make separate form for each taxable year) from Distilled Spirits Tax—Special Tax, 19....., to....., 19.....

3. Character of assessment or tax 7,773.60—\$3,557.83 (explanation attached).

4. Amount of assessment, \$.....; dates of payment.....

5. Date stamps were purchased from the Government..... 3,557.83

6. Amount to be refunded (\$7,773.60) \$ all

7. Amount to be abated (not applicable to income or estate taxes) 1433 \$.....

8. The time within which this claim may be legally filed expires, under Section Title 26, U. S. C. A. of the Revenue Act of 19....., on August 14, 1941.

The deponent verily believes that this claim should be allowed for the following reasons:

Claimant for abatement and refund herein bases his claim for such abatement and refund upon the following facts:

Claimant was in the years 1934 and 1935 the lessee of a certain ranch situated in the County of Monterey, State of California, comprising approximately 1500 acres.

Upon this ranch claimant raises cattle and raised and harvested sugar beets. During this same period, claimant also operated upon said ranch what is known as a United States Army Stallion

Station under assignment from the United States Army.

Claimant has farmed this ranch under lease for many years prior to the year 1934. The fee to the ranch is owned by Robert Fatjo, a banker residing in the Town of Santa Clara, Santa Clara County, California.

Sometime during the month of October, 1934, three men, Bianchini, Biagi and one Angelo Rodni went to the Dougherty ranch and sub-leased from the claimant, Frank A. Dougherty, some twenty acres of the ranch which Dougherty had under lease from Fatjo. These twenty acres were leased at a rental of \$400.00 for a period of one year.

The claimant, Dougherty, was informed by the persons who leased this acreage that the acreage was to be used for the raising of chickens. Included in this subleased acreage was a horse barn and corral which was adjacent to the farm residence of the claimant.

On June 3rd, 1935, certain agents of the Alcoholic Tax Unit of the Internal Revenue Service went to the subleased acreage herein referred to and there found an alcoholic still in operation. They arrested certain persons in the vicinity of the still. They thereafter went to the farm residence of the claimant, Dougherty, and placed him under arrest. Thereafter, the Federal Grand Jury for the Northern District of California returned an indictment at San Francisco, charging the claimant Dougherty, and Dante Brunza, Angelo Rodni, Guiseppe Quinto,

George Harrison, [7] Guiseppe Biagi and Guillo Bianchini, in seven counts, with violation of Title 26, U.S.C.A., Sections 281, 282, 284, 306, 307, and a conspiracy to violate the above mentioned sections of the Internal Revenue Laws with respect to illicit distilling, (Title 18, Section 88, U.S.C.A.).

Thereafter, in the latter part of January, 1936, all apprehended defendants, with the exception of the claimant, having pleaded guilty, the indictment was called for trial before the Honorable Michael J. Roche sitting in the Northern District of California, Southern Division, after a trial by a jury, and on January 31st, 1936, the claimant Dougherty was found not guilty on all counts of the indictment.

On January 15th, 1936, the Collector of Internal Revenue at San Francisco, California served upon claimant Dougherty notice and demand for tax.

That said note is dated January 15th, 1936, and under the column "Name and Address", appears the following:

"Dougherty Frank A	Case 3814-M
Rt 1 Box 292	List Nov 1935
Salinas Calif	Page 515—3"

Under the column "Items", there appears the words:

"5832 00
1941 60"

Under the column "Paid", nothing appears;

Under the column "Assessments", appears
"7773 60"

Under the column "Description", appears the
following:

"Distilled Spirits
Tax on 2916 P Gal Mash
Tax on 970 8 P Gal Alc
November 1934"

Thereafter, and on March 30th, 1936, there was
filed in the office of the County Recorder of the
County of Monterey, State of California, notice of
tax lien under Internal Revenue Laws which
notice [8] is indexed in the said County Recorder's
office as No. 27488 and a copy of which notice is in
words and figures, as follows:

"Form 668
Revised Oct. 1928
Treasury Department
Internal Revenue Service

NOTICE OF TAX LIEN UNDER
INTERNAL REVENUE LAWS

No. 85-1936

United States Internal Revenue,
First District of California

March 28, 1936

Pursuant to the provisions of Section 3186
of the Revised statutes of the United States,
as amended by Section 613 of the Revenue Act
of 1928 (Act of May 29, 1928, 45 Stat., 875),

notice is hereby given that there have been assessed under the Internal Revenue Laws of the United States against the following named taxpayer, taxes (including penalties) which after demand for payment thereof remain unpaid, and that by virtue of the above-mentioned statute the amount of said taxes, together with interest, penalties, and costs that may accrue in addition thereto, is a lien in favor of the United States upon all property and rights and property belonging to said taxpayer, to-wit:

Name of tax payer Frank A. Dougherty,

Residence or place of business Rt. #1, Box 292, Salinas, Calif.,

Nature of tax Distilled Spirits—Special tax

Taxable period Nov. 1934

Amount of tax assessed.....\$7773.60

5% Pen..... 388.68

Additional (penalty) tax assessed.....\$

Interest from date of notice until date of payment.....

Date assessment list received.....

1935—Nov. page 515: Line 3-4-5.

JOHN V. LEWIS,

Collector.

CERTIFICATE OF OFFICER AUTHORIZED BY LAW TO TAKE ACKNOWLEDGMENTS. [9]

State of California
County of Monterey—ss.

On this day personally appeared before me a notary public in and for the state and county aforesaid, John V. Lewis, (Official title) Collector of Internal Revenue for the First District of California, to me well known as the person who executed the foregoing instrument, and acknowledged that he executed the same for the purposes therein expressed.

In Witness Whereof I have hereunto set my hand and official seal, this the 28th day of March, 1936.

[Seal] A. B. READING
Notary Public, in and for the County of Alameda, State of California.

My commission expires 8/27/36.

To Recorder of Monterey County,
Salinas, Calif.,

Indexed No. 27488
United States Collector of Internal Revenue
Mar. 30, 1936
at 30 min. past 8 AM
in Vol.....of Official Records
Page.....Monterey County.
John E. Wallace, Recorder
by E. Wallace, Deputy.”

In the harvesting of sugar beets in the area where claimant's leased ranch was situated, it had

been the practice for the Spreckles Sugar Company to advance to the ranchers the necessary funds with which to harvest the sugar beets. Thereafter, the sugar beets were delivered to the Spreckles Sugar Company who would deduct the money advanced by [10] them and pay over to the ranchers the sale price of the sugar beet crop.

During the harvest time of 1936, because of the fact that notice of the tax lien had been served on the Spreckles Sugar Company, the Company refused to advance the moneys necessary to harvest the crop of claimant without a clearance for their protection from the Collector of Internal Revenue. To obviate this situation, the claimant delivered to the Collector of Internal Revenue at San Francisco, on or about October 5th, 1936, an agreement to the effect that the Spreckles Sugar Company could advance the moneys necessary for the harvesting of sugar beet crop and that after delivery of the crop to the Sugar Company, the proceeds of the crop, less the advance made by the Sugar Company, should be delivered to the Collector of Internal Revenue. This direction to the Collector of Internal Revenue reserved in the claimant any right he may have had to protest the levy of the tax or the payment thereof. Said direction to the Collector of Internal Revenue is in words and figures as follows:

“October 5, 1936.

To Hon. John V. Lewis,
Collector of Internal Revenue,
Federal Office Building,
San Francisco, California.

Dear Sir:

The undersigned, Frank Dougherty, hereby consents that any moneys now in the hands of, or to come into the hands of the Spreckels Sugar Company at Salinas, as the result of the sale of his present 1936 sugar beet crop be turned over to the Collector of Internal Revenue, after deducting the necessary expenses for the harvesting of said crop.

By this consent, the undersigned does not waive his right to protest the assessment and/or collection of those certain taxes covered by warrant of distraint heretofore issued against him by the Bureau of Internal Revenue, nor does he hereby waive any rights he may have to sue for the recovery of any such moneys seized by the Collector of Internal Revenue, as a result of said warrant of distraint, nor does he, in any wise, by the execution of this instrument, admit the tax liability described in said warrant of distraint.

FRANK DOUGHERTY. [11]

State of California,
County of Monterey—ss.

On this 5th day of October, in the year One Thousand Nine Hundred and thirty-six before me, J. T. Harrington, a Notary Public, in and for the County of Monterey, personally appeared Frank Dougherty, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal, at my office in the County of Monterey, State of California, the day and year in this certificate first above written.

[Seal] J. T. HARRINGTON,
Notary Public in and for the County of Monterey, State of California.”

As a result of this direction to the Collector of Internal Revenue, the Spreckles Sugar Company turned over to the Collector the sum of \$3,557.83. This amount is the amount claimant here prays the refund and abatement of. He also asks abatement of the balance of the assessment in the sum of \$4,215.77.

It is the contention of the claimant that there is no tax liability on him for the mash and alcohol alleged to have been produced on that part of the ranch which he had leased to other persons.

Claimant contends—

(1) That he had no knowledge that an illicit distillery was being conducted on the said ranch;

(2) That under the provisions of Title 26, U.S. C.A., Section 1150, Subdivision 6 (d) persons liable for tax on distilled spirits are “every proprietor or possessor of, and every person in any manner interested in the use of any still, distillery or apparatus”; that claimant was not a proprietor or possessor, or a person interested in any manner in the use of a still, distillery or distilling apparatus situated on the portion of the ranch that he had subleased, and therefore, could not [12] be liable for any tax on the mash or distilled spirits produced;

(3) That even though claimant could be found to have had knowledge that the illicit distillery was being operated on the premises he had subleased, unless he was a proprietor, a possessor or a person interested in the use of such still, distillery or distilling apparatus, there would be no tax liability upon him. The fact that he received rent from the operators of the illicit distillery would not render him liable for the tax due on such illicit distilled spirits. It is the contention of claimant that the language in Section 1150, Title 26, U.S.C.A., Subdivision 6 (d)—“every person in any manner interested in the use of” means a direct interest in the business and not merely an indirect interest in the success of a business as belonging to other persons.

Therefore, the rent received by claimant would not be such an interest in the use of the still, distillery or distilling apparatus as would render him liable for the tax on mash and spirits produced; and

(4) That claimant was tried in the United States District Court upon all charges involving the operation of an illicit distillery that could be pressed against him and was by a jury found not guilty of all such charges. [13]

FRANK A. DOUGHERTY

Signed

Sworn to and subscribed before me this 5th day of November, 1937.

[Seal]

MARGERY PALMTAG,

Notary Public

Monterey County Notary Public

(Title)

(Reverse Side Not Filled In) [6]

EXHIBIT B

Treasury Department
Washington

[Seal]

Office of

Commissioner of Internal Revenue

Address Reply to

Commissioner of Internal Revenue
and Refer to

AT:T:CSA

Cl. No. DS-107898

Mar. 2, 1938

Mr. Frank A. Dougherty,
Route No. 1, Box 292,
Salinas, California.

Sir:

Your claim for refund of \$3,557.83, and abatement of an outstanding assessment in the amount of \$4,215.77, has been considered.

It appears that an assessment in the amount of \$7,773.60, representing tax on 970.8 gallons of distilled spirits and 2,916 proof gallons of alcohol contained in mash, was made against you and others on the Distilled Spirits List for November 1935, page 515, line 3, for the First Collection District of California. It further appears that the amount of \$3,557.83 was paid by you in August, 1937.

You request refund of the amount paid, and abatement of the outstanding assessment in the

amount of \$4,215.77, based on your statement that the land on which the still was located had been leased to other persons and that you had no knowledge that an illegal distillery was being operated thereon.

Section 3251, Revised Statutes, provides that every proprietor or possessor of, and every person in any manner interested in the use of any still, distillery, or distilling apparatus, shall be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom, [14] and Section 3248, Revised Statutes, provides that the tax shall attach to the spirits whether in the mash or separated by distillation.

The records on file in this office disclose that you had such interest in the distillery in question as to make you liable under the sections of law referred to above to the tax on the spirits seized. Your claim, is therefore, rejected.

Payment of the outstanding assessment in the amount of \$4,215.77 should be made to the Collector of Internal Revenue at San Francisco, California, together with penalty and any interest which may have accrued.

By direction of the Commissioner of Internal Revenue:

Respectfully,
STEWART BERKSHIRE,
Deputy Commissioner.

By Registered Mail int.

[Endorsed]: Filed May 4, 1938. [15]

[Title of District Court and Cause.]

ANSWER

Defendant admits the allegations contained in paragraphs I, II, III, IV, V, VI, VII, VIII, IX, X and XI of the complaint and denies each and every other allegation contained in the complaint.

Wherefore the defendant demands:

1. That the plaintiff take nothing by reason of his action;
2. That the defendant be hence dismissed with his costs of suit herein incurred;
3. Such other and further relief as may seem to this court just and equitable in the premises.

FRANK J. HENNESSY,
United States Attorney,
Attorney for Defendant.

(Admission of Service)

[Endorsed]: Filed Mar. 15, 1939. [16]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 8th day of August, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: the Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

This cause having been heretofore tried and submitted, being now fully considered, and the Court having filed its Memorandum Opinion thereon, it is, in accordance with said Memorandum Opinion, Ordered that judgment be entered herein in favor of the defendant and against the plaintiff, upon findings of fact and conclusions of law to be prepared by the attorney for the defendant in accordance with Rule 42 of this Court, and that the defendant recover the costs of this action. [17]

[Title of District Court and Cause.]

MEMORANDUM OPINION

Roche, District Judge:

This is a civil action against a Collector of Internal Revenue for the recovery of taxes and interest paid under protest by plaintiff. The defendant, hereafter called the Collector, relies upon section 3251 of the Revised Statutes of the United States (26 U.S.C.A. 1150(d), for his assessment and collection of taxes and interest from plaintiff. The applicable portion of section 3251 reads as follows:

“Every proprietor or possessor of, and every person in any manner interested in the use of, any still, distillery or distilling apparatus shall

be jointly and severally liable for the taxes imposed by law on the distilled spirits produced therefrom.”

Plaintiff, the lessee of a sixteen hundred acre ranch, in 1934 sublet twenty acres on the south west side of his residence to certain individuals, who utilized a barn on the rented property—and within 200 feet of plaintiff’s house—for the illegal operation of a still. At the trial, a written agreement was submitted in evidence to show that the sublessees were to pay plaintiff an annual [18] rental of \$400.00; but testimony was likewise produced by the parties to the agreement that plaintiff was to receive \$125.00 per month for the use of his premises. Furthermore, proof was presented to show that plaintiff was fully aware of the use to which his property was being put and that he permitted such use despite its illegality. In 1935 the sublessees were apprehended for their violation of the internal revenue laws on plaintiff’s premises. The Collector, upon discovering the relationship of plaintiff to the liquor traffic, invoked section 3251 of the Revenue Act, quoted above, and assessed him for the distilled spirits produced on his leased property. Plaintiff denied, and continues to deny, liability. The Collector, while not urging that plaintiff is a “proprietor or possessor of” a still, contends that he is a person interested in the use of a still, distillery or distilling apparatus. Evidence at the trial was limited to this single issue.

The question before the court is this: Has plaintiff, through his conduct and relationship with men engaged in the operation of a still on plaintiff's premises, shown himself to be "in any manner interested in the use of any still"?

Section 3251 of the Revised Statutes of the United States was made a part of the revenue laws in order to prevent fraud against the government. It is to be construed so as to accomplish the intention of the legislature (*U. S. v. Wolters* (S. D. Cal. 1891) 46 F. 509, 510). When the internal revenue laws were passed in 1868, Congress deemed it advisable to make liable persons other than proprietors and possessors of stills in order to curb completely the illicit liquor business. Hence the inclusions of "every person in any manner interested". The cases construing this language are few in number. Decisions, such as *U. S. v. Wolters*, above, which hold that stockholders of corporations [19] are "interested", do not assist the court in the problem now before it, nor does the state ruling in *Brown v. State* (Ark. 1923) 255 S. W. 878, which holds that an intermediary to a liquor transaction is "interested"—unless plaintiff's acquiescence and negative activities on the premises can be said to make him an intermediary. (*U. S. v. Dellaro*, (1938) 99 F2d 781, holds that acquiescence does not make such an individual a criminal accessory, but is merely indicative of an interest.)

The only ruling on a set of facts which come

close to paralleling those in the case at bar may be found in the jury trial of *United States v. Van Slyke* (1878) 28 F. Cas. 363, No. 16,610. In the *Van Slyke* case the owner of premises used for the distillation of liquor was being sued for taxes. Under these circumstances the court instructed the jury that the interest of a secret partner was necessary before the defendant might be held liable. Such an instruction appears to set too high a standard for the government to comply with in order to make section 3251 workable in the case at bar. Yet it may have been justified under the facts of the *Van Slyke* case, for it appears from the report that the defendant may have had no knowledge of what was going on, but was merely acting as a landlord. In speaking of the importance of knowledge on the part of the defendant and its affect on "interest" the court instructed the jury:

"But his knowledge, if he had such knowledge, that the distillery was being run contrary to law and that the taxes were not being paid, and his conduct in relation thereto, are all to be considered as part of the evidence in this case, and it is for you to say how far they bear upon the question of his interest in the distillery business."

Such language, when taken with the original standards set by the court, would indicate that profit taking, with knowledge of the source of the profits,

constitutes the taker a man with the kind of interest required by section [20] 3251 of the Revised Statutes of the United States, and that such a man would be liable for taxes. In the case before the court, the issue of secret partnership has not been raised, but ample proof has been presented to show that the plaintiff was well aware of the source of his rental, and that he clearly benefited by reason of his interest in the enterprise. A review of all the evidence on the subject of rental payments convinces the court that the amount received by plaintiff far exceeded the sum which might be earned in a legitimate farming enterprise. Plaintiff's knowledge, plus his monetary compensation for permitting the liquor business to be operated on his premises, together give rise to an interest in plaintiff within the meaning of the language contained in section 3251.

Upon due consideration of the entire case, the court finds that plaintiff is not entitled to recover taxes and interest paid under protest. Judgment will be entered in favor of the Collector, together with the costs of this action.

August 8, 1939.

MICHAEL J. ROCHE

United States District Judge

[Endorsed]: Filed Aug. 8, 1939. [21]

[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED AMENDMENTS
TO FINDINGS OF FACT AND CON-
CLUSION OF LAW PROPOSED BY DE-
FENDANT.

Now comes the plaintiff herein and in pur-
suance to the rule of Court proposes the following
amendments to the findings of fact and conclusions
of law heretofore proposed by defendant herein
and lodged with the Clerk of the Court herein:

FINDINGS OF FACT

Plaintiff proposes that defendant's proposed find-
ings of fact contained on page 2 of said proposed
findings of fact and conclusions of law, beginning
with paragraph II, line 20 thereof down to and in-
cluding page 3, line 28 thereof, be stricken, and in
lieu thereof, the following be substituted:

In October, 1934, three men, Biagi, Bianchini and
Rodoni [22] and others entered into an agreement
to set up the operation of an unregistered, un-
bonded distillery for the distilling of alcohol with
intent to defraud the United States of the internal
revenue tax on the alcohol produced. Plaintiff
herein, who was the lessee of a certain 1600-acre
ranch, subleased to one Rodoni 20 acres of said 1600-
acre ranch, the said 20 acres so subleased contain-
ing barns and outhouses and that plaintiff subleased
said 20 acres for a period of twelve months at a
rental of \$400.00 for said period of twelve months;

that plaintiff so leased said 20 acres for farming and cattle raising purposes.

That plaintiff received in payment under said sublease the sum of \$200.00 in two payments of \$100.00 each.

That on June 3rd, 1935, certain agents of the Alcohol Tax Unit of the Internal Revenue Service entered upon said subleased 20 acres and found therein an unlicensed and unregistered distillery and the Collector of Internal Revenue thereafter determined that there had been produced in said distillery upon said subleased 20 acres 3,886 proof gallons of alcohol.

That plaintiff was not aware of the use to which the property was intended to be put and did not agree or permit that such property be used for the illicit production of alcohol in violation of the Internal Revenue Laws of the United States.

That plaintiff had no other interest in the 20 acres subleased except that he received therefor the rental agreed upon.

That plaintiff was not financially interested in the still located upon said 20 subleased acres.

CONCLUSIONS OF LAW

Plaintiff proposes that defendant's proposed conclusions of law, contained on page 4 thereof, beginning with paragraph I, line 24 thereof and including therein paragraph II, and paragraphs III

and IV on page 5, be stricken and in place thereof the following conclusions of law be included: [23]

I.

That plaintiff was not a person interested in the use of the still, distillery or distilling apparatus within the meaning of Section 3251 of the Revised Statutes (Section 1150d of Title 26, U.S.C.A.)

II.

That plaintiff was and is not liable for the internal revenue taxes assessed against him.

III.

That the sum of \$3,557.83 seized and collected by defendant from plaintiff and wrongfully and incorrectly seized and collected and that plaintiff is entitled to its return with interest as provided by law.

IV.

That the plaintiff is entitled to judgment against defendant in the sum of \$3,557.83, together with interest thereon, and for his costs of suit herein incurred.

Dated: August 18th, 1939.

FAULKNER & O'CONNOR
Attorneys for Plaintiff.

[Endorsed]: Lodged 8/18/39. [24]

[Title of District Court and Cause.]

FINDINGS OF FACTS AND CONCLUSIONS
OF LAW

This cause came on regularly for trial in the above entitled court, the plaintiff Frank A. Dougherty appearing by his attorney James B. O'Connor, and the defendant John V. Lewis appearing and being represented by W. F. Mathewson, Assistant United States Attorney, evidence was adduced by the respective parties and the cause was duly argued by counsel, both orally and upon written Briefs subsequently filed, and the court now being fully advised in the premises finds the following:

FINDINGS OF FACTS

I.

This is an action brought against a former Collector [25] of Internal Revenue by virtue of Sections 3220 and 3226 of the Revised Statutes of the United States, (Sections 1670, 1672, and 1673 of Title 26 USCA), to recover taxes and interest alleged to have been erroneously or illegally assessed or collected. The plaintiff is a citizen of the State of California and a resident of the Southern Division of the United States District Court in and for the Northern District of California. The defendant also is a resident of the Southern Division of the United States District Court in and for the Northern District of California, and was the duly appointed, qualified and acting Collector of the

United States Internal Revenue for the First District of California, in the State of California, and in the Southern Division of the Northern District of California, at the time of the assessment and collection of the taxes. Prior to the filing of the Complaint the defendant resigned as Collector of the United States Internal Revenue for the First District of California.

II.

In October, 1934, three men, Biagi, Bianchini and Rodoni, entered into an agreement to set up and operate an unregistered, unbonded illegal distillery for the production of alcohol with intent to defraud the United States of the Internal Revenue taxes on the alcohol produced. To effectuate this scheme the plaintiff agreed with these three men to permit them to set up the distillery in a barn located upon a portion of a 1600 acre ranch leased by the plaintiff. This agreement was in consideration of the monthly payment to the plaintiff of the sum of \$125.00 and upon the condition that these three men would attempt to protect the plaintiff from the criminal and tax liabilities [26] incident to the unlawful still operation. To effectuate this condition of the agreement one of these men signed with a fictitious name and delivered to the plaintiff a document purporting to be a lease for 14 months at a rental of \$400 of 20 acres of the plaintiff's leased ranch.

The stated purpose of the purported lease was dry stock feeding.

In October, 1934, the three men in accordance with the agreement set up an unlicensed and unregistered distillery in a barn located on the premises described in the "lease", 200 feet from the plaintiff's residence. This distillery was not operated continuously but was operated in October and November, 1934 and in May, 1935. The production was determined by the Collector of Internal Revenue to be 3886 proof gallons of alcohol. The correctness of this determination and the amount of the tax subsequently assessed was not questioned by plaintiff. The plaintiff received the monthly rental of \$125.00 for each of the three months the still was in operation.

The plaintiff was fully aware of the use to which the property was intended to be and was put and agreed to and permitted such use with full knowledge of its illegality. The plaintiff knew the illegal source of his share in the enterprise which in amount far exceeded the sum which might have been earned as rental for the use named in the "lease" or any legitimate farming enterprise, conducted on the "leased" premises.

III.

The defendant on January 15, 1936 assessed against the plaintiff and others Internal Revenue taxes in the sum of \$7773.60 representing taxes on

970.8 gallons of distilled [27] spirits and 2916 proof gallons of alcohol contained in mash. On October 5, 1936 a warrant of distraint having been issued by the defendant against the plaintiff, plaintiff entered into an agreement with the defendant whereby money coming in to the possession of the Spreckels Sugar Company of Salinas, California, as a result of the sale of the 1936 beet crop of plaintiff be turned over to the Collector of Internal Revenue. This agreement provided that the payment to the defendant of such money was under protest and without the waiver of plaintiff's right to sue for its recovery and was not an admission of any tax liability. In August 1937 pursuant to the warrant of distraint and such agreement there was collected by the defendant from the Spreckels Sugar Company at Salinas, California, the sum of \$3557.83, which money was the property of the plaintiff. On November 5, 1937, plaintiff filed with and presented to the defendant a claim for refund of the money paid and for abatement of the balance of the tax assessed. On March 2, 1938, the Commissioner of Internal Revenue of the Treasury Department of the United States rejected this claim for refund and abatement.

CONCLUSIONS OF LAW

I.

That within the meaning of Section 3251 of the Revised Statutes (Section 1150d of Title 26 United

States Code Annotated) the plaintiff was a person interested in the use of the still, distillery and distilling apparatus;

II.

That the plaintiff was and is liable for the Internal Revenue taxes assessed against him; [28]

III.

That the sum of \$3557.83 seized and collected by defendant from plaintiff was rightfully and correctly seized and collected and plaintiff is not entitled to its return;

IV.

That the defendant is entitled to a judgment against plaintiff for his costs of suit herein incurred.

Dated: This 17th day of October, 1939.

MICHAEL J. ROCHE

United States District Judge.

[Endorsed]: Lodged Aug. 14, 1939. Filed Oct. 17, 1939. [29]

In the Southern Division of the United States
District Court for the Northern District of
California.

No. 20425-R

FRANK A. DOUGHERTY,

Plaintiff,

vs.

JOHN V. LEWIS, former Collector of Internal
Revenue for the First District of California,
Defendant.

JUDGMENT ON FINDINGS

This cause having come on regularly for trial upon the 13th day of June, 1939, before the Court sitting without a jury, a trial by jury having been waived by attorneys; Jas. B. O'Connor, J. J. Harrington and William Danielson, Esqrs., appearing as attorneys for plaintiff, and Hon. Frank J. Hennessy, United States Attorney, Wilbur F. Mathewson, and William E. Licking, Esqrs., Assistant United States Attorneys, appearing on behalf of defendant, and the trial having been proceeded with on the 14th day of June, in said year and term, and oral and documentary evidence on behalf of the respective parties having been introduced and closed, and the cause having been submitted to the Court for consideration and decision; and the Court after due deliberation, having rendered its decision and filed its findings, and

ordered that judgment be entered in favor of defendant and for costs in accordance with said findings:

Now, therefore, by virtue of the law and by reason of the findings aforesaid, it is considered by the Court that plaintiff take nothing by this action and that defendant go hereof without day, and that said defendant do have and recover of and from said plaintiff his costs herein expended taxed at \$.

Judgment entered this 19th day of October, 1939.

WALTER B. MALING

Clerk.

[Endorsed]: Filed Oct. 19, 1939. [30]

[Title of District Court and Cause.]

NOTICE

To Messrs. Faulkner & O'Connor,
Attorneys at Law,
1101 Balfour Building,
San Francisco, California.

Hon. Frank J. Hennessy,
U. S. Attorney,
Post Office Building,
San Francisco, California.

You Are Hereby Notified that on October 19th, 1939 a Judgment On Findings was entered of rec-

ord in this office in the above entitled case.

WALTER B. MALING,
Clerk.

San Francisco, California. October 19th, 1939.

[31]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR A NEW TRIAL

To the Honorable Frank J. Hennessy, Esq., United
States Attorney for the Northern District of
California, Attorney for Defendant:

Please take notice that the plaintiff in the above
entitled matter has filed herein his motion for a
new trial and that the same will be called for hear-
ing before the Honorable Michael J. Roche in his
court room situated in the Post Office Building in
the City [32] and County of San Francisco, State
of California, on Monday, November 6th, 1939 at
the hour of ten o'clock A. M. of said day or as soon
thereafter as counsel can be heard or at such other
day as the said Law and Motion Calendar of said
Honorable Michael J. Roche shall be called.

Dated: October 28th, 1939.

FAULKNER & O'CONNOR
Attorneys for Plaintiff.

(Admission of service)

[Endorsed]: Filed Oct. 27, 1939. [33]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Now comes the plaintiff in the above entitled action and moves the above entitled Court to set aside that certain judgment entered of record in the office of the Clerk of the above entitled Court on October 19th, 1939 in favor of the defendant herein and against plaintiff and to grant plaintiff herein a new trial of the above entitled cause. [34]

This motion for a new trial is made upon the grounds—

I.

That the evidence was insufficient as a matter of law to justify the Court in entering judgment in favor of defendant and against plaintiff.

II.

That the Court erred as a matter of law in holding that plaintiff was within the meaning of Section 3251 of the Revised Statute of the United States (Section 1150d of Title 26, U.S.C.A.) a person interested in the use of the still, distillery and distilling apparatus.

III.

That the Court erred as a matter of law in holding that plaintiff was and is liable for the internal revenue tax assessed against him.

IV.

That the Court erred as a matter of law in holding that the sum of \$3,557.83 seized and collected

by defendant from plaintiff was rightfully and correctly seized and collected and in holding that plaintiff was not entitled to its return.

V.

That the Court erred as a matter of law in holding that defendant was entitled to judgment against plaintiff for costs of suit.

Dated: October 28th, 1939.

FAULKNER & O'CONNOR
Attorneys for Plaintiff

Admission of service.

[Endorsed]: Filed Oct. 27, 1939. [35]

[Title of District Court.]

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 27th day of November, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: the Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

Plaintiff's motion for a new trial having been heretofore heard and submitted, being now fully

considered, it is ordered that said motion for new trial be and the same is hereby denied. [36]

[Title of District Court and Cause.]

NOTICE

To Messrs. Faulkner & O'Connor,
1101 Balfour Building,
San Francisco, California.

Hon. Frank J. Hennessy,
U. S. Attorney,
Post Office Building,
San Francisco, California.

You Are Hereby Notified that on November 27th, 1939 Judge Michael J. Roche Ordered that the motion for new trial in the above entitled case be Denied.

WALTER B. MALING,

Clerk. (a)

San Francisco, California. November 27th, 1939.

[37]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To John V. Lewis, former Collector of Internal Revenue for the First District of California, the defendant above named, and to Hon. Frank J. Hennessy, United States Attorney, Attorney for Defendant, Post Office Building, San Francisco, California.

You, and each of you, will please take notice that Frank A. Dougherty, the plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the [38] final judgment and the whole thereof entered in this action on the 19th day of October, 1939.

Dated: January 17, 1940.

FAULKNER & O'CONNOR
Attorneys for Appellant,
Frank A. Dougherty, 1101
Balfour Building,
San Francisco, California [39]

Receipt of a copy of the within Notice of Appeal is hereby admitted this 17th day of January, 1940.

FRANK J. HENNESSY
United States Attorney,
Attorney for Defendant, John
V. Lewis, former Collector of
Internal Revenue for the First
District of California.

[Endorsed]: Filed Jan. 17, 1940. [40]

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men by these Presents,

That we, Frank A. Dougherty, as principal... and National Automobile Insurance Company, a body corporate duly incorporated under the laws of the State of California, and authorized to act as surety under the Act of Congress, as sureties, approved August 13, 1894, whose principal office is located in Los Angeles, State of California, are held and firmly bound unto The United States of America in the full and just sum of Two Hundred Fifty (\$250.00) dollars, to be paid to the said The United States of America certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of January in the year of our Lord One Thousand Nine Hundred and Forty.

Whereas, lately at a District Court of the United States for the Northern District of California in a suit depending in said Court, between Frank A. Dougherty, plaintiff vs. John V. Lewis, former Collector of Internal Revenue for the First District of California, Defendant, a judgment was rendered against the said Frank A. Dougherty and the said Frank A. Dougherty having filed his notice of appeal having to reverse the.....in the aforesaid

suit, and the notice of appeal to the Circuit Court, having been served on the United States Attorney, Frank J. Hennessy, attorney for defendant.

Now, the condition of the above obligation is such, That if the said Frank A. Dougherty shall prosecute his appeal to effect, and answer his damages and all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

This recognizance shall be deemed and construed to contain the "express agreement" summary judgment, and execution thereon, mentioned in Rule 34 of the District Court.

Acknowledged before me by the Principal Frank A. Dougherty day and year first above written.

ERNEST E. WILLIAMS

U. S. Commissioner Northern
District of California at S. F.

(Verification)

[Seal] FRANK A. DOUGHERTY
NATIONAL AUTOMOBILE IN-
SURANCE COMPANY

By GEO. W. POULTNEY
Agent and Attorney in Fact

[Endorsed]: Filed Jan. 17, 1940. [41]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between the parties hereto, through their respective counsel, that

the Record on Appeal to the Ninth Circuit of the United States Circuit Court of Appeals in the above entitled case shall consist of the complete record and all the proceedings and evidence in the action, subject to the approval of the District Court.

Dated: January 26, 1940.

FAULKNER & O'CONNOR

Attorneys for Frank A. Dougherty

FRANK J. HENNESSY

United States Attorney

By W. F. MATHEWSON

Attorney for John V. Lewis,
former Collector of Internal
Revenue, etc.

Approved:

MICHAEL J. ROCHE

Judge of the United States District Court.

[Endorsed]: Filed Feb. 8, 1940. [42]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND DOCKETING

Pursuant to Rule 73, Subdivision (g), Rules of Civil Procedure, the time within which the record on appeal in the above entitled action may be filed and within which the action may be docketed in the

United States Circuit Court of Appeals is hereby extended to and including March 28th, 1940.

Dated: February 23, 1940.

MICHAEL J. ROCHE

United States District Judge

[Endorsed]: Filed Feb. 23, 1940. [43]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL AND DOCKETING

Pursuant to Rule 73, Subdivision (g), Rules of Civil Procedure, the time within which the record on appeal in the above entitled action may be filed and within which the action may be docketed in the United States Circuit Court of Appeals is hereby extended to and including the 14th day of April, 1940.

Dated: March 26, 1940.

MICHAEL J. ROCHE

United States District Judge.

[Endorsed]: Filed Mar. 26, 1940. [44]

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR TRANSMISSION OF RECORDS, PROCEEDINGS AND EVIDENCE IN ACCORDANCE WITH RULE 75 OF THE RULES OF CIVIL PROCEDURE.

It is stipulated by and between counsel for the respective parties that the Clerk of this Court, in conformity with Rule 75 of the Rules of Civil Procedure, shall transmit to the Clerk of the Circuit Court of Appeals for the Ninth Circuit, the following designated portions of records, proceedings and evidence in this cause, certifying that those portions thereof that are necessary to be certified pursuant to said rules. All costs thereof to be paid by [45] plaintiff appellant, and that the original reporter's transcript and exhibits be forwarded, pursuant to Rule 75, Subdivision (i) of the Rules of Civil Procedure.

1. Complaint.
2. Answer.
3. Order of August 8, 1939, directing judgment in favor of defendant.
4. Memorandum opinion of Court.
5. Judgment in favor of defendant.
6. Defendant's proposed findings of fact and conclusions of law.
7. Plaintiff's proposed amendments to findings of fact and conclusions of law.
8. Court's findings of fact and conclusions of law.

9. Notice of entry of judgment of findings.
10. Notice of motion for a new trial.
11. Motion for a new trial.
12. Notice of order denying motion for a new trial.
13. Order denying motion for a new trial.
14. Notice of appeal.
15. Cost bond.
16. Stipulations and order re record on appeal.
17. Stipulations and orders enlarging time for filing record on appeal and docketing.
18. This stipulation and order.
19. Original reporter's transcript of evidence of testimony taken at trial.
20. Original exhibits introduced in evidence at trial.

Dated: April, 1940.

FAULKNER & O'CONNOR,
JAMES B. O'CONNOR,
Attorneys for Plaintiff.
FRANK J. HENNESSY,
United States Attorney.

By W. F. MATHEWSON,
Assistant United States Atty.,
Attorney for Defendant.

Upon the foregoing stipulation

So ordered:

MICHAEL J. ROCHE,
United States District Judge.

[Endorsed]: Filed Apr. 8, 1940. [46]

[Title of District Court.]

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, do hereby certify that the foregoing 46 pages, numbered from 1 to 46, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case entitled Frank A. Dougherty, plaintiff, vs. John V. Lewis, etc., No. 20425-R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$5.40 and that the said amount has been paid to me by the Attorneys for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 9th day of April, A.D. 1940.

[Seal]

WALTER B. MALING,
Clerk.

J. P. WELSH,
Deputy Clerk. [47]

[Title of District Court and Cause.]

TESTIMONY

Tuesday, June 13, 1939.

Counsel appearing:

For Plaintiff: Messrs. Faulkner & O'Connor,
by James B. O'Connor, Esq.

For Defendant: Wilbur F. Mathewson, Esq.,
Assistant U. S. Attorney, William E. Licking, Esq.,
Assistant U. S. Attorney.

Mr. O'Connor: If your Honor please, this is an action by the plaintiff, Frank Dougherty, against John V. Lewis, former Collector of Internal Revenue. The complaint recites that it is a case under the Revenue Laws of assessment of taxes under Section 1670, Title 26, of U.S.C.A., which provides that every proprietor or possessor or person in any manner interested in the use of any still, distillery or distillation apparatus shall be jointly and severally liable for the taxes imposed on the distilled spirits produced therefrom.

The complaint recites that the former Collector of Internal Revenue on October 5, 1936, by virtue of a warrant of distraint issued by him against the plaintiff seized certain properties or moneys belonging to the plaintiff that were then in the possession of the Spreckens Sugar Company, in Salinas; that thereafter, after [49] seizure of these moneys by the Collector, a claim was filed with the Commissioner of Internal Revenue for a refund of

the taxes collected; that this refund was denied by the Commissioner.

The petition then alleges that the plaintiff was not a person liable for the tax by virtue of Section 1150, and that he was not interested in the use of the distillery which was seized on a certain ranch in Monterey County on June 3, 1935.

The Answer of the Government admits all the allegations of the complaint, with the exceptions of paragraphs 12 and 13; is that correct, Mr. Mathewson?

Mr. Mathewson: That is correct.

Mr. O'Connor: So I assume that the sole question here is whether or not this plaintiff was at the time of the seizure of the still referred to in the complaint a proprietor of, a possessor of or person in any manner interested in the use of the still or distilling apparatus.

FRANK A. DOUGHERTY,

the plaintiff; called as a witness in his own behalf; sworn.

The Clerk: Please state your name to the Court.

A. Frank A. Dougherty.

Direct Examination

Mr. O'Connor: Q. Mr. Dougherty, your name is Frank A. Dougherty? A. Yes, sir.

Q. You are the plaintiff in this case; is that correct? A. Yes, sir.

(Testimony of Frank A. Dougherty.)

Q. You were a defendant in the case of United States v. Frank A. Dougherty, et al., No. 25556-R; is that correct? A. Yes, sir.

Q. And you were tried in that case; is that correct? A. Yes, sir.

Q. And you were found not guilty of the charge of possession of a still; is that correct?

A. Yes, sir. [50]

Q. Where do you reside, Mr. Dougherty?

A. In Buena Vista District out from Salinas.

Q. That is in Monterey County?

A. Yes, Monterey County.

Q. How old are you?

A. I am about 55 now, I guess.

Q. How long have you lived in Monterey County? A. All my life.

Q. How long have you lived where you are now living?

A. About 20 years, I should judge; since 1917.

Q. Directing your attention to the years 1934 and 1935, were you living at the place where you now reside during that period of time?

A. Yes.

Q. What is the name of the ranch on which you were living? A. Mr. Bob Fatjo's.

Q. That is the ranch owned by Mr. Robert Fatjo; is that correct? A. Yes.

Q. During the years 1934 and 1935 were you farming that ranch? A. Yes, sir.

(Testimony of Frank A. Dougherty.)

Q. How many acres does that ranch consist of?

A. Practically 1500.

Q. You were farming it by virtue of a lease from Mr. Fatjo; is that correct?

A. No lease, but just verbal between us.

Q. You had an oral lease from year to year; is that correct? A. Yes.

Q. Directing your attention particularly to the month of October, 1934, did you at that time sub-lease any portion of these premises?

A. I leased to three men.

Q. What did you lease to them?

A. 20 acres.

Q. Where are those 20 acres?

A. They are the east, south side of the place; that would be—I don't know what you would call it.

Q. Now, tell the Court the circumstances under which you leased these premises. Who first came to you and talked to you concerning them?

A. Well, it was Angelo Rodoni. [51]

Q. At that time did you know him by the name of Rodoni? A. No.

Q. What name did you know him by then?

A. Well, he signed the lease as Perolli.

Q. Perolli? A. Yes, sir.

Q. Is this the gentleman, here, Mr. Dougherty?

A. Yes, sir.

Q. That is Mr. Rodoni? A. Yes, sir.

(Testimony of Frank A. Dougherty.)

Q. Whom you knew as Perolli? Is that correct? A. Yes, sir.

Q. Was there anybody else with him at that time? A. Bianchini.

Q. Bianchini, is it? A. Bianchini.

Q. Do you see him in the court-room? Is that the gentleman there? A. Yes.

Q. Was there anyone else with him?

A. Biagi.

Q. Do you see him in the court-room?

A. Over there with a kind of grey sweater.

Q. This gentleman, here? A. Yes.

Q. These three men came to see you sometime during the month of October, 1934; is that correct?

A. Yes.

Q. Did you have a conversation with them at that time?

A. They wanted to lease 20 acres of land.

Q. What 20 acres?

A. The 20 acres with the barn. The fence runs through the center of it. Of that part was hay land and the other part was pasture land.

Q. And that 20 acres also included a horse barn?

A. Horse barn and two buildings.

Q. Two out-houses? A. Yes, sir.

Q. How many horses would that horse barn accommodate, ordinarily?

A. It would hold eight.

(Testimony of Frank A. Dougherty.)

Q. Did it have any storage capacity in addition to that? A. About 30 tons of hay.

Q. Was that baled hay or loose hay?

A. Baled hay. [52]

Q. Did you discuss with them the rent for those 20 acres, including the barn?

A. No; they just said that they would pay me \$20 an acre for it.

Q. What was the total rent to be?

A. \$400.

Q. Did they pay you any money at that time?

A. They came and talked and then they came back and gave me a hundred dollars.

Q. Did they later come back and have a lease for you to sign? A. They gave me a lease.

Q. At the time that you signed the lease did they pay you any additional money?

A. They paid me a hundred dollars.

Q. They paid you another hundred dollars?

A. When they brought the lease back the lease was wrong.

Q. When they first brought the lease to you there was a mistake in the lease, is that correct?

A. Yes.

Q. What was the mistake in the lease?

A. Two miles from town, and it was twelve.

Q. In other words, the description of the ranch from town was incorrect? A. Yes.

Q. Was the lease taken away and returned with that corrected? A. Yes.

(Testimony of Frank A. Dougherty.)

Q. At that time they paid you an additional \$100?
A. Yes.

Q. I show you this lease and ask you if that is the lease to which you are referring?

A. Yes, sir.

Q. Is that your signature on the lease?

A. Yes, sir.

Mr. O'Connor: I offer this lease in evidence as Plaintiff's Exhibit.

The Court: Let it be marked.

(The document was marked "Plaintiff's Exhibit 1.")

PLAINTIFF'S EXHIBIT No. 1

LEASE

FRANK DOUGHERTY TO
CORANTI PEROLLI

This Indenture made the 23rd day of October one thousand nine hundred and thirty four between Frank Dougherty of Salinas, County of Monterey, State of California, hereinafter called "lessor," and Coranti Perolli of San Jose County of Santa Clara, State of California, hereinafter called "lessee,"

Witnesseth: That the said lessor does by these presents, demise and lease unto the said lessee, and the said lessee does hereby hire and take from the said lessor, Twenty acres on the South West side of the Dougherty place in Salinas Valley situate about 12 miles South West from the town of Salinas with the appurtenances, for the term of Fourteen

(Testimony of Frank A. Dougherty.)

months and seven days from the 23rd day of October one thousand nine hundred and thirty five, at the total rent or sum of Four Hundred dollars, payable in lawful money of the United States of America, in manner following, to wit: Two Hundred Dollars on the delivery of this instrument, and Two Hundred Dollars on May 1st, 1935;

And it is hereby agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein agreed to be kept by the lessee, then it shall be lawful for the said lessor, at his option, to terminate this lease and to reenter the said premises and remove all persons therefrom.

And the said lessee does hereby covenant, promise, and agree to pay to the said lessor the said rent in the manner herein specified, and not to assign this lease, or let or underlet the whole or any part of said premises without the written consent of lessor, and it *it* is further agreed that said leased property will not be used in any, manner or form so as to conflict with any Federal or State laws or any County ordinances, Violation of which will cancel this lease and the lessor will immediately remove all persons therefrom, and that, at the expiration of said term, the said lessee will quit and surrender the said premises in as good state and condition as reasonable use and wear thereof will permit (damages by the elements excepted). Should the lessee hold over the term herein created, such tenancy shall

(Testimony of Frank A. Dougherty.)

be from month to month only, and be on the same terms and conditions as are herein stated

And the said lessor does hereby covenant, promise, and agree that the said lessee paying the said rent and performing the covenants aforesaid, shall and may peaceably and quietly have, hold, and enjoy the said premises for the term aforesaid.

It is further understood and agreed that all the provisions of this lease shall extend to and be binding upon the heirs and assigns of the lessor and the executors, administrators, and assigns of the lessee.

In Witness Whereof, the said parties to these presents have hereunto set their hands the day and year first above written.

FRANK DOUGHERTY
CORANTI PEROLLI

Signed and Delivered in the Presence of

.....
.....

[Endorsed]: Pltf's Ex. No. 1. Filed June 13, 1939. Walter B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

Mr. O'Connor: Q. Now, did you receive any further money from them as rental for these premises? A. No, sir. [53]

Q. When were they to pay you the additional \$200? A. In the middle of the lease.

(Testimony of Frank A. Dougherty.)

Q. In the middle of the lease. Did they ever pay you that additional \$200? A. No, sir.

Q. After you leased the premises to these men did you again have any contact with them?

A. Well, no, I hadn't.

Q. Did you see them?

A. I seen them different times.

Q. Where would you see them?

A. Around the place.

Q. That is, going into the 20 acres?

A. Yes, sir.

Q. How would they enter this 20 acres of land? Where would they enter their 20 acres?

A. On the south corner.

Q. On the south corner?

A. Southeast corner.

Q. Off the river road?

A. Off the river road.

Q. And that river road is a county highway?

A. Yes, sir.

Q. Is there any means by which they could get from the 20 acres that was occupied by them to any portion of the ranch that was occupied by you?

A. That was all fenced off.

Q. That was all fenced off?

A. Yes, sir.

Q. And they did not use the entrance that you used to go from the river road into your premises?

A. No, sir.

(Testimony of Frank A. Dougherty.)

Q. They used a separate entrance of their own?

A. A separate gate.

Q. Directing your attention to the month of June, June 3, 1935, do you recall being arrested upon that occasion by Alcohol Tax Agents of the Department of Internal Revenue?

A. Yes, sir.

Q. When were you arrested, in the day time or night time?

A. Night time, I judge about nine o'clock.

Q. About nine o'clock at night. Were you taken by these agents to the barn that you had leased to these men?

A. Yes.

Q. When you got there what did you see?

A. I seen two men sitting in there with an officer and a little black—little light [54] covered with black paper.

Q. What?

A. Light covered with black paper.

Q. What else did you see?

A. Well, I seen the still.

Q. You saw the still. Now, then, prior to the occasion on the night of June 3rd, when you were taken to the barn on this 20 acres, had you any knowledge that there was a still on those premises?

A. That is the first time.

Q. Did you have any interest in the still, itself?

A. No, sir.

Q. Did you ever invest any money in the still?

A. No, sir.

(Testimony of Frank A. Dougherty.)

Q. Did you have any arrangement with either of these three men, or any other person, whereby you were to receive any profits that were made from the operation of that still? A. No, sir.

Q. Did you have any arrangement with these men, or anybody else, whereby you were to pay any of the losses incurred in the operation of this still if such losses were incurred? A. No, sir.

Q. Mr. Dougherty, during this period of time from about October, 1934, until June, 1935, you were actually personally farming part of that property; is that correct? A. Yes, sir.

Q. You, personally, were farming part of that ranch? A. Yes.

Q. Where is the major portion of the tillable or farming land situated? Whereabouts on the ranch is the main portion of your tillable or farming land situated?

A. Oh, it is away over—the grain land is away over on the other side of the ranch. There is about 60 acres in that field.

Q. Is that below the road?

A. No, that is above the road.

Q. That is the grain land?

A. That is the grain land.

Q. Is there some land below the road that you farm?

A. Yes, sir, that is about half a mile from the house.

(Testimony of Frank A. Dougherty.)

Q. What type of farming do you do there— were you doing there at that time?

A. Raised beets, sometimes lettuce, sometimes [55] beans.

Q. Sugar beets? A. Yes, sir.

Q. Or lettuce or beans? A. Yes.

Q. You were actually farming during the period of time from October, 1934 to June, 1935?

A. Yes, sir.

Q. During that period of time what portion of your time would you spend in the fields?

A. Practically all the time.

Q. What time would you arise in the morning?

A. Five o'clock.

Q. And after having your breakfast you would go immediately to the fields? A. Yes.

Q. How long would you remain there?

A. All day, practically.

Q. Would you return to your home for lunch?

A. Sometimes; sometimes not.

Q. Sometimes you would and sometimes you wouldn't. So, practically speaking, you worked from sun-up until sun-down on your farm; is that correct? A. Yes, sir.

Q. In addition to the farming that you did there, did you have at that time and operate at that time a Government remount station? A. Yes.

Q. You had a stallion there? A. Yes, sir.

Q. Under the supervision and direction of the United States Government? A. Yes, sir.

(Testimony of Frank A. Dougherty.)

Q. You still operate that remount station?

A. Yes, sir.

Q. By the way, you were not now a lessee of that ranch, are you? A. No, sir.

Q. You are not farming that ranch?

A. No, sir.

Q. In other words, all you are doing is taking care of this remount station; is that correct?

A. That is all.

Q. By the way, Mr. Dougherty, when you leased these premises, or when these three men came to you and talked about leasing these premises, [56] what did they tell you they wanted the twenty acres for?

A. Wanted it for chickens and dry stock.

Q. For raising chickens and the running of dry stock, is that correct? A. Yes, sir.

Q. Now, sometime during the year of 1935 or 1936 you were served, I assume, or you were advised that there had been served on the Spreckels Sugar Company a warrant of distraint by the Collector of Internal Revenue? A. Yes, sir.

Q. Did you at that time have certain monies due you from the Spreckels Sugar Company?

A. Yes.

Q. They advanced you certain monies to permit you to harvest your crop that year; is that correct?

A. Yes, sir.

Q. Your sugar beet crop was harvested?

A. Yes, sir.

Q. During 1936? A. Yes, sir.

(Testimony of Frank A. Dougherty.)

Q. And the crop was delivered to the Spreckels Sugar Company out of Salinas; is that correct?

A. Yes, sir.

Q. And whatever monies were due you from that crop after deducting expenses of the harvesting which had been advanced to you, were seized by the Collector of Internal Revenue; is that correct?

A. Yes, sir.

Q. You entered into an agreement with the Collector of Internal Revenue at that time, did you not, whereby you turned over what monies were due you under protest; is that correct? A. Yes, sir.

Q. And the amount of money that was collected by the Collector of Internal Revenue at that time was some \$3557.83; is that correct?

A. Yes, sir.

Q. And the total amount of the tax that had been assessed against you and the other persons who were involved in the criminal prosecution, United States of America v. Frank A. Dougherty, et al, No. 25556-R—the total amount of tax assessed against you and the other [57] individuals in the case to which I have referred was \$7773.40; is that correct?

A. Yes.

Q. Of that amount, there has been collected under protest—— A. Yes, sir.

Q. (Continuing) ——by the Collector some \$3557.83; is that correct? A. Yes, sir.

Q. And in addition to the assessment of the taxes in the sum of \$7773.60 there was also as-

(Testimony of Frank A. Dougherty.)

sessed against you a penalty in the sum of \$388.68; is that correct? A. Yes, sir.

Mr. O'Connor: I think that is all, if your Honor please.

Cross Examination

Mr. Mathewson: Mr. Dougherty, you recall the occasion when you first discussed the leasing of your property to these three men, Bianchini, Biagi and Rodoni?

A. Well, I was down at the remount stable and I seen them up at the house and I went up and seen them.

Q. Did you know any of these three men before you met them on that day? A. No, sir.

Q. You didn't know any one of those men?

A. No, sir.

Q. You were down at the remount station, saw them up at the house, and you went up to meet them? A. Yes, sir.

Q. At that time the men told you they wanted the place to raise chickens and feed dry stock?

A. Yes, sir.

Q. Was the place equipped to feed chickens at that time? A. What?

Q. Was the place equipped to feed chickens at that time? A. Well, just the barn.

Q. Just the barn. Are you familiar with the equipment necessary to raise chickens?

A. Give chickens the run of the place, there; just a common chicken yard.

(Testimony of Frank A. Dougherty.)

Q. At the time you discussed the rental of the property did they tell you what property they wanted?

A. They wanted 20 acres. [58]

Q. Did they say they wanted 20 acres?

A. I told them there was about 20 there.

Q. Did they say they wanted 20 acres or did they point out the area of land they wanted? I say, did they tell you they wanted to rent 20 acres, or did they go on your property and point out the land they wanted to rent?

A. They wanted to rent 20 acres with the barn and the buildings there.

Q. Of the area that you rented to them, how much of it is hay land and how much is pasture land?

A. There is 10 acres fenced; there is a fence runs through the center of it and that on the left is 10 acres of hay land.

Q. Mr. Dougherty, I show you a photograph of a ranch premises and ask you if you recognize the premises depicted in the photograph?

A. Well, this shows most of the back end of it.

Q. Most of the back end of your place?

A. Yes, sir. This was taken the other way.

Q. That photograph is taken from the back of the place looking toward the road, is it?

A. Yes, sir.

Q. Can you point out on the photograph to his Honor the area of land that was rented to these three men in October of 1934?

(Testimony of Frank A. Dougherty.)

A. There is half of it ain't on this photograph.

Q. Will you point out the half that is on there?

A. Just this half; the pasture land, practically all that; not all of it.

Q. I can't see what portions you are pointing out.

(The witness indicates on the photograph.)

The Court: Step up here and point.

A. This portion, here (indicating). This 10 acres out here, this is farm land.

Q. This side of the barn (indicating)?

A. Yes, sir. This is the back part; the fence runs here, right out to the County Road. [59]

Q. Is there ten acres here? A. Yes, sir.

Q. That is what you would call pasture land?

A. Pasture land and there is the fence—you see the fence coming up here (indicating).

Q. Yes.

A. This goes in with this other in a field back of this barn, and that went over that way to that pasture land or to that hay land.

Mr. Mathewson. Q. Will you point out on that photograph your residence?

A. It is over here (indicating). I stayed away over on this side of the house. Mr. Fatjo had this house.

The Court: Q. Who is Mr. Fatjo?

A. Mr. Robert Fatjo, of Santa Clara.

Q. He is the man that owns the place?

A. He owns the place.

(Testimony of Frank A. Dougherty.)

Mr. Mathewson: Q. And that is the barn you rented and is the barn in which the still was found?

A. Yes, sir.

Mr. Mathewson: If your Honor please, I ask that this be marked as Defendant's Exhibit for identification first in order.

The Court: Let it be marked.

(The photograph referred to was marked "Defendant's Exhibit A for identification.")

Mr. Mathewson: Q. What time of day was it that these three men called upon you to rent your property? A. To rent the property?

Q. Yes, what time of day was it?

A. Well, I think it was the afternoon, about——

Q. Sometime in the afternoon?

A. Yes, sir.

Q. Did you discuss with them the amount of the rental?

A. No, they just said that they would give me \$20 an acre for it.

Q. \$20 an acre for 20 acres of land?

A. Yes, sir.

Q. That included the barn?

A. The barn and two buildings.

Q. Also included the corral? A. Yes.

Q. Did it include water?

A. They had the well. [60]

Q. Did it include any place on the ranch for men to stay?

(Testimony of Frank A. Dougherty.)

A. Not without they had stayed over in those out-buildings, there, at the west—at the east side of the barn.

Q. You did not rent them any other cabins on your place? A. No, sir.

Q. At the time of the renting of the property did they ask you if they could use any other portion of your premises? A. No, sir.

Q. About how much hay can you raise in that pasture land a year?

A. Well, that year there was about 25 ton of hay there, an excellent good crop.

Q. 25 ton of hay? A. Yes.

Q. On the 10 acres? A. Yes, sir.

Q. In the preparation of the lease did you request a written lease? A. No, sir.

Q. Did they offer to give you a written lease?

A. Yes, sir.

Q. They brought the lease to you for your examination before you signed it, did they not?

A. They fetched it to sign it, yes, sir.

Q. Did you examine the lease at that time?

A. I looked at it.

Q. Did you observe in the lease the provision for forfeiture?

A. No, sir, I never read it that close.

Q. You didn't read it that close? A. No.

Q. What portion of the lease did you read?

A. I just took a look at it, and I seen the mileage was wrong on it, and I told them that the mile-

(Testimony of Frank A. Dougherty.)

age was 12 miles and they had it marked 2. And I told them it didn't make any difference, just a short time—

Q. The only thing that you noticed in the lease was that the mileage was wrong?

A. That is all that I noticed—was right there to see.

Q. Did you notice the description of the property leased? A. Just—no.

Q. Did you notice the term of the lease, the length of time it was to run?

A. The terms were supposed to be from November to [61] November, one year; that is all I could lease it.

Q. That is the only period of time for which you leased it?

A. Because I had no right to lease it any different.

Q. And did you ask them to put the forfeiture provision in that lease? A. To do what?

Q. Will you read this provision of the lease (handing paper to witness)?

A. I think so, I read that part, yes, sir.

Q. You read that at the time?

A. Yes, sir.

Q. Did you ask them to put it in the lease?

A. Well, it was in the lease.

Q. It was in the lease when you first saw it?

A. Yes, sir.

(Testimony of Frank A. Dougherty.)

Q. When you discussed the rental of the property did you ask them to put such a provision in the lease they offered to give you?

A. I didn't understand.

Q. Did you ask them to put that in the lease?

A. I told them—I didn't ask them but I told them that part.

Q. You told them you wanted that part in?

A. Yes.

The Court: Read it, so I may follow it, for the purpose of the record.

Mr. Mathewson: The provision reads:

“And it is further agreed that said leased property will not be used in any way or in any manner or form so as to conflict with any federal or state laws or any county ordinances, violation of which will cancel this lease and the lessee will immediately remove all persons therefrom.”

Q. You stated that there was a fence running from the corral down to the river road.

A. Yes, sir.

Q. Was there any way to get from the property that you had leased into your place?

A. Well, there is a gate there, but the gate was locked. [62]

Q. The gate was locked? A. Yes.

Q. Was it locked with a padlock?

A. Yes, sir.

Q. Was it your padlock?

A. It was the lock that was there.

(Testimony of Frank A. Dougherty.)

Q. It was the lock that was on the fence?

A. They had the key; I didn't have no key to it.

Q. It was your padlock but they had the key?

A. Yes; it had been there on the fence.

Q. The lease provided for the payment of \$200 on the signature of the lease, and \$200 on May 1st?

A. When?

Q. On May 1, 1935.

A. They paid \$100 between October and November, and then when I got the lease in November they paid the other hundred dollars.

Q. Did the lease provide for the payment of any other money?

A. Half at the half of the year.

Q. How much was to be paid then?

A. \$200.

Q. Was that ever paid? A. No, sir.

Q. Did you ever ask them to pay it?

A. Well, the thing was broken up.

Q. The thing was broken up? A. The still.

Q. The thing was broken?

A. I never seen them no more.

Q. On the first of the year—at the middle of the year?

A. The middle of the year, a little after the middle.

Q. The lease provides for the payment of \$200 on May 1st. The still was seized on June 3rd?

A. Yes.

Q. Did you ask them for the payment?

(Testimony of Frank A. Dougherty.)

A. I didn't see them.

Q. You didn't see them? A. No, sir.

Q. Had you seen them around the place previous to that? A. No, sir.

Q. Had you seen them at any time during the year of 1935? A. Just in the first part.

Q. Just in the first part of 1935? A. Yes.

[63]

Q. Did you know at that time—did you know at any time that employees of these three men were sleeping on portions of your ranch that you had not leased to them? A. No, sir, I did not.

Q. Where were you at the time you were arrested on June 3 of 1935? A. In the house.

Q. About what time of the evening was it?

A. What time it was?

Q. Yes.

A. About nine o'clock. I was making out a report on the Government stallion.

Q. Isn't it a fact that at the time you were arrested and the agent stated that you were under arrest that you asked, "What for?"

A. No, sir.

Q. "For that over there? I have a lease."

A. No, sir.

Q. You didn't ask that? A. No, sir.

Q. You didn't state that? A. No, sir.

Q. Isn't it a fact that at the time of your arrest the first thing you did was to show them your lease?

A. No, sir.

Q. Did you ever see any of the three men who leased the property around your place in the fall of 1934?

A. Only when I was locked up with them.

Q. Only when you were locked up. I said in the fall of 1934.

A. No, sir.

Q. You never saw them around your place?

A. No, sir.

Q. Did you notice any trucks or any cars being driven into your place?

A. Sometimes when I was up plowing in the field I would see a car drive in that portion and drive out.

Q. What time of day or night was that?

A. Well, maybe along about three or four o'clock in the afternoon.

Q. Three or four in the afternoon. Did you ever smell any unusual odors on the place?

A. I did not.

Q. Did you smell any unusual odors on the place?

A. No, sir. [64]

Q. Did you hear any unusual sounds coming from the barn?

A. No, sir.

Q. Did you ever hear the sound of burners?

A. No, sir.

Q. You stated on your direct examination that these three men, as a part of the lease, were able to use the pump?

Mr. O'Connor: I don't think he stated that on direct examination; he stated that on cross-examination.

(Testimony of Frank A. Dougherty.)

A. The water went with the place.

Mr. Mathewson: Q. The water went with the place, did it, Mr. Dougherty?

A. Yes, that was theirs.

Q. Who was to pay for the power?

A. They paid for the power.

Q. At the time you leased the property to the three men, Bianchini and Biagi and Rodoni, were you receiving and paying for electric power on the ranch? A. Not when they had it.

Q. Before they had it? A. Oh, yes, sir.

Q. You had power? A. Yes, sir.

Q. After you leased the property to these men did they inform you at that time that they would change the power? A. Yes, sir.

Q. That was part of the arrangement?

A. Yes, sir.

Q. That they would apply for the power in their names? A. Yes, sir.

Q. Between the time of the lease and the time the distillery was seized in June, 1935, did you apply for power? A. No, sir.

Q. The power remained in their names from October of 1934 until June of 1935?

Mr. O'Connor: Just a moment. If he knows. I submit it isn't a proper question unless he knows whether it remained in their names, or not. If your Honor please, he asked the question if Mr. Dougherty made any application to change the power from October until June 3, 1935, and he said

(Testimony of Frank A. Dougherty.)

no. Now he asks the question if it remained in their names. How does he know? Perhaps he has no knowledge of that fact. [65]

The Court: Ask him the direct question.

Mr. Mathewson: I will withdraw the question.

Q. You did not apply for power?

A. No, sir.

Q. Between October of 1934 and June of 1935?

A. No, sir.

Q. How much rental do you pay for the property? A. I was paid a hundred dollars.

Mr. O'Connor: I don't think you understand the question, Mr. Dougherty.

Mr. Mathewson: Q. At the time in 1934 you had leased the Fatjo Ranch from Mr. Fatjo.

A. Yes, sir.

Q. That ranch is approximately 1500 acres?

A. Yes, sir.

Q. How much rental did you pay a year?

A. Well, \$2000.

Q. You paid \$2000 a year? A. Yes, sir.

Q. You said that of the 1500 acres how much of this land was devoted to raising crops?

A. About 150 acres of grain land; that is up in the hills, like; and I guess about 60 acres of beet and beans and lettuce land.

The Court: Q. How many acres in beets did you have in in the year that you sold them?

(Testimony of Frank A. Dougherty.)

A. There was, I think, 30.

Q. What money did the Spreckels people advance to raise that crop? A. How much?

A. They advance money if you ain't got it for seeding them, and then they advance you some money for hauling them, and then they advance you some money for irrigating them.

Q. You had 30 acres. What did that net?

A. Yes, sir.

Q. What did that net? Is this the net, \$7000?

A. The net is——

Q. Do you know?

Mr. O'Connor: What was the question, if your Honor please?

The Court: 30 acres in beets. What money was coming from Spreckels without any advances on that 30 acres? [66]

Mr. O'Connor: The credit due on the beets during that period of time for the total acreage was \$4311.82.

The Court: What is that \$7000?

Mr. O'Connor: The \$7000 is the total amount of tax that was assessed against all of these defendants and the sum of \$3700 is the amount due him after Spreckels deducted the moneys that they advanced for harvesting that crop.

The Court: All right; proceed.

Mr. Mathewson: Q. You say there was 150 acres in grain and 60 acres in beets, lettuce and chards. What other land did you have?

(Testimony of Frank A. Dougherty.)

A. What other?

Q. Yes.

A. There was a piece of land down on the river bottom, I guess probably 200 acres, that is in the river bed.

Q. That is waste land?

A. Practically all waste land. Some years you can use it; some years you can't.

Q. What other type of property did you have?

A. There is just hills and grazing land.

Q. The balance of those 1500 acres was grazing land?

A. No; there is 1500 acres in the whole ranch.

Q. Other than the 150 acres devoted to grain, 60 acres devoted to beets, and 200 in the bottom land—

A. Yes.

Q. —the rest of it was grazing land?

A. Grazing land.

Q. What about the area occupied by ranch buildings?

A. Well, you would call that ranch property or farming property.

Q. About how many acres was devoted to that?

A. There was ten acres of hay land, and I guess if they wanted to they could make vegetables there, this side of the windmill, because there is plenty of room there between those oaks right out in front—probably two or three acres, if anybody wanted to do anything with that.

(Testimony of Frank A. Dougherty.)

Q. The 10 acres of hay land that you rented to the three men, Biagi, [67] Bianchini and Rodoni—was that part of the 150 acres of grain land?

A. No; that is right across the place—it is off some—it is a long ways off from the other farm land.

Q. In 1934 and 1935 you were raising beets. Were you raising any hay?

A. Raising any hay?

Q. Yes.

A. I raised hay up on those benches.

Q. Where are the benches?

A. Well, they are away off. There is flat run-off pasture—some call them plateaus—up away over on that side of the ranch; there is one in the center; there is one on the other side of the ranch. There is another—three of them.

Q. Did you have any cattle on the ranch in 1934?

A. I had 48 head of Al Wallace's, 60 head of cattle belonging to Jim Riley, and then I had a lot of horses.

Q. About how many horses did you have?

A. Probably forty or fifty transient horses and about 60 brood mares there for breeding, belonging to different people.

Q. Were the mares pastured there all the time?

A. Yes, sir, while they are being bred.

(Testimony of Frank A. Dougherty.)

Q. How much did you get from Wallace for his cattle? A. For whose?

Q. Wallace.

Mr. O'Connor: I object to this upon the ground that it is incompetent, irrelevant, and immaterial.

Mr. Mathewson: If your Honor please, the materiality is the rental value of this property, which the Government insists is an exorbitant rental value.

Mr. O'Connor: I still submit that it is immaterial under the law whether it is an exorbitant rental or not.

The Court: It is an element. It is remote. I will allow it.

Mr. Mathewson: Q. How much did you receive from Mr. Wallace for pasturing his 48 head of cattle?

A. Well, some years it is— [68] I guess it was 75 cents that year, I ain't sure. When cattle dropped in the market they couldn't pay as much.

Q. It was 75 cents in 1934?

A. Well, I think so.

Q. Did he have the 48 head on your place all the year round? A. He had 48 head.

Q. Were they there all year?

A. They was.

Q. What about the 60 head Riley had there?

A. Riley's was practically—they came in in January and they went out in—oh, I guess—I don't think they went out; I think he fed them on beet

(Testimony of Frank A. Dougherty.)

tops. He fed them on beet tops. They went out way late.

Q. You say he fed them on beet tops and they went out way late?

A. Yes, he sold some of them for beef.

Q. The 75 cents a head that Wallace paid you for his 48 head, was that 75 cents a year?

A. No, sir, a month.

Q. 75 cents a month. How much did Riley pay you for the 60 head? A. 75 cents.

Q. How much did you get for the 40 horses you had on the place?

A. They run that year \$2; used to be \$3.

Q. \$2 a head that year—that is 1934?

A. Yes.

Q. Were there 40 head on the ranch all the year around, all that year?

A. Practically all the year.

Q. And the 60 mares that you had—how long were they there?

A. Well, they run about—well, it depends on the breeding. You keep them until you breed them, maybe two months, maybe three months some of them; I have had mares down there breeding them six months, then they didn't catch.

Q. Did you have 60 head of mares on your ranch all the year around?

A. Well, say about half the year, half the breeding months—six months.

(Testimony of Frank A. Dougherty.)

Q. Did you charge anything for the pasturage?

A. 10 cents a day. [69]

Q. 10 cents a day pasturage? A. Yes, sir.

Q. The only dry stock you had on the place then were Wallace's 48 head and Riley's 60 head?

A. Well, of course, there was a lot of calves with those cows of Riley's.

Q. In the back of your place there is a little arroyo with a barn in it where a man was found at the time the still was seized. Did you ever go to that place?

A. No, sir; I never used that place.

Q. From October of 1934 to June of 1935 did you go out to this house or barn?

A. No, sir.

Q. Did you ever notice whether or not there was a shell and boiler out in that arroyo?

A. Not until after it was knocked over.

Q. Did you ever see any dry stock or any chickens on the property that you leased to Messrs. Biagi, Bianchini and Rodoni? A. No, sir.

Q. During the period from October 1934 to June 1935 were you leaving for work early every morning and returning late every night?

A. Yes, sir.

Q. What time would you leave the house?

A. Daylight.

Q. What time would you return?

A. Dark.

(Testimony of Frank A. Dougherty.)

Q. Is that true of every morning?

A. Every morning, pretty nearly.

Q. Including Sundays?

A. Well, Sundays, if there was anything to do we have to do it just the same. Where there is stock they have got to be fed.

Q. Daylight—what time of the day is that?

A. Well, take it in the early summer mornings, four o'clock is daylight.

Q. In October of 1934 what time would that be?

A. It was pretty daylight yet along about five—half past four.

Q. When would it become dark?

A. Well, along about seven o'clock.

Q. Daylight lasted in October from about five in the morning until seven at night?

A. Yes, sir. [70]

Q. What about May of 1935? About when would it become light then?

A. I guess practically pretty near the same thing.

Q. About five o'clock in the morning and seven o'clock at night? A. Yes.

Q. During this period of time when you would leave for work, where would you go to work?

A. October?

Q. Yes.

A. Generally working in beans early in the morning. You have to cut them early when it is damp.

(Testimony of Frank A. Dougherty.)

Q. Where were the beans planted at that time?

A. Half a mile away from the place.

Q. That is, half a mile up the river?

A. Yes, sir; on the lower side, toward the river.

Q. Would you stay with the beans all day long?

A. You pile them and you rake them.

Q. I mean, would you stay in the field all day long, or would you come back to get lunch?

A. Come back maybe to get lunch, maybe not; depends on what you have to do. We always generally try to rush it through if we can to keep them from popping open.

Q. Then during October of 1934 you were harvesting beans from seven o'clock in the morning until seven o'clock at night, except for coming back to the ranch occasionally at noon time?

A. Yes. And then we were getting some lettuce land ready, cultivating it, getting it ready to plant an early crop.

Q. Where was that?

A. Just below the same place.

Q. In May of 1935 what were you doing around the ranch then? What work were you doing?

A. May of 1935?

Q. Yes.

A. I guess we were hauling baled hay.

Q. And where were you hauling the hay from?

A. Out from these fields, to put it in the cow barn,—remount barn.

(Testimony of Frank A. Dougherty.)

Q. Did you haul hay down from the fields by the house?

A. Put it [71] into the remount barn to store it.

Q. Did you bring it down by the house?

A. No, sir.

Q. How would you get it down?

A. Came down by the old place, half a mile away, and came out on the County Road.

Q. Half a mile away—that is half a mile up or down the river? A. Down.

Q. Half a mile down the river?

A. Down the road.

Q. Then you would bring it back along the river road to the remount station?

A. Yes, sir.

Q. About how much of the day did you spend harvesting the hay? A. All day.

Q. All day? A. Yes, sir.

Q. Would you come back to the ranch during that period of time—that is, during the day time?

A. Probably to get lunch.

Q. Just for lunch? A. Yes, sir.

Q. Well, then, during October, 1934 and May, 1935 you were working away from the ranch all day long except to return for lunch?

A. Yes, sir.

Q. About how far is the barn that you leased to these men from your residence on the ranch?

A. Well, from where I stayed in the house it is about 250 feet, I think; something like that.

(Testimony of Frank A. Dougherty.)

Q. There is a road, is there not, that runs from the river road past the front of your house into the corral? A. No.

Q. Isn't there a road running from the river road?

A. There is a road runs the north part into my place.

Q. There is a road, then, running from the north gate? A. Yes, toward the town.

Q. Past the front of your house?

A. No. Well, that is the river road.

Q. I am speaking now of the road——

A. That has just been lately. [72]

Q. Just been lately?

A. Yes, that is just lately that that road has been there. It comes in crooked that way. That wasn't there then.

Q. Wasn't there that road in October, 1934?

A. No, sir, there was no road there.

Q. Was there more than one road leading from the river road into your place in October, 1934?

A. Only one.

Q. Only one? A. To the house.

Q. To the house? A. Yes, sir.

Q. There was another to the corral, was there?

A. Sir?

Q. There was another road from the river road to the corral?

A. On the north—south road.

(Testimony of Frank A. Dougherty.)

Q. That was on the south road?

A. Where that big gate is way down. That ran up to the barn that these gentlemen had.

Q. Then there was a north road running from the river road to your house? A. Yes.

Q. How close did that road come to your house?

A. How close? I didn't get that.

Q. How close did that road pass in front of your house? Did it run directly to your house?

A. You mean the river road?

Q. No.

A. The other road runs in to the house. From the river road it runs into the northern part of the house.

Q. Did that road continue through into the corral? A. No, sir.

Q. It ended at your house?

A. Ended at the house.

Q. The only other road into the place was the south road that ran into the corral rented by these three men? A. Yes, sir.

Q. Where did you get your water for your house? A. They furnished it.

Q. They furnished water for your house?

A. Yes, sir.

Q. Is there a tank on the premises?

A. Yes.

Q. Where is the tank located?

A. On a hill. [73]

(Testimony of Frank A. Dougherty.)

Q. Where is the hill with relation to the house?

A. What?

Q. Where is the hill and the tank with relation to your house? A. On the west.

Q. It is on a hill up above your house?

A. Yes, back of the house.

Q. You got your water for the house from that tank? A. Yes.

Q. The water that these men were to use for their dry stock, was that to be obtained from the same tank?

A. Yes, the same thing, or they could get it from the—they could get it from over at the pump.

Q. They could take it directly from the pump?

A. Yes, sir, they had a trough there.

Q. One more thing, Mr. Dougherty. At the time you rented the property to these three men and discussed rental value, the area to be rented, whether or not you would have a lease, didn't one or all of these three men tell you that they intended to use the property for a still? A. No, sir.

Q. Didn't they tell you that they were going to make whiskey there? A. No, sir.

Q. Didn't Rodoni, before he introduced Biagi and Bianchini, ask you if he could use your place to make whiskey? A. No, sir.

Q. Isn't it a fact that the rental that you received was not \$400 for the year, but \$125 a month?

A. No, sir.

Mr. Mathewson: That is all.

(Testimony of Frank A. Dougherty.)

Redirect Examination.

Mr. O'Connor: Q. Mr. Dougherty, is it an uncommon thing for farmers in that vicinity to rent and farm portions of ranches without there being living quarters on that particular portion?

A. Lot of places.

Q. In other words, a man might live several miles away from where he [74] is farming and come over and farm a particular piece of land that he may rent; is that correct?

A. There is half of the people in Salinas that farm live in town.

Mr. O'Connor: That is all.

The Court: We will take a recess.

(After recess:)

Mr. O'Connor: That is the plaintiff's case, if your Honor please.

ROBERT A. FATJO,

Called as a witness for the Defendant; Sworn.

The Clerk: Q. Please state your full name to the Court. A. Robert A. Fatjo.

Direct Examination.

Mr. Mathewson: Q. Where do you reside, Mr. Fatjo? A. Santa Clara.

Q. Are you the owner of the Fatjo Ranch on the River Road south of Salinas?

A. Yes, sir.

(Testimony of Robert A. Fatjo.)

Q. How many acres are there in that ranch?

A. Well, from the tax receipt it looks about around 1600—1600 acres, from what I can make out.

Q. Calling your attention to 1934 and 1935, was the property leased at that time?

A. It was rented. I don't think we had a lease.

Q. Rented?

A. It was rented. For several years we didn't have any lease, if I remember right. I couldn't find it, anyhow. I looked for it before I came.

Q. To whom was the property rented, do you recollect?

A. It was rented to Dougherty Bros. at first; at that time Frank A. Dougherty.

Q. And Frank A. Dougherty was the renter in 1934 and 1935? [75] A. I think so.

Q. What were the terms of the rental?

A. Two thousand a year at that time.

Q. The rental, then, was from year to year?

A. Yes.

Mr. Mathewson: That is all.

Cross Examination.

Mr. O'Connor: Q. Mr. Fatjo, Dougherty Bros.; and Frank Dougherty later, rented those premises for over a period of a number of years; isn't that correct? A. Since, I think, 1917.

Q. And prior to 1934 Frank Dougherty had been paying a higher rent than \$2000 a year; isn't that true? A. Yes.

(Testimony of Robert A. Fatjo.)

Q. At one time he was paying as high as \$3600 a year; isn't that correct?

A. I think it was paying \$3000 and paying the taxes.

Q. So that would run it better than \$3600?

A. Yes, the taxes was around \$800.

Q. When times got a little tougher you reduced the rent for him? A. Yes.

Q. Do you recall that sometime during the latter part of October, 1934 at the time that you renewed his lease or renewed his yearly rental of the premises, that he asked you if it would be all right with you if he sub-leased part of the premises for farming purposes? A. Yes, sir.

Q. That is correct, isn't it? A. Yes.

Q. You told him you had no objection?

A. Yes.

Mr. O'Connor: That is all.

Redirect Examination.

Mr. Mathewson: Q. And Mr. Fatjo, you say the rental was for a period of one year. With what month did this period begin and with what month did it end, do you recollect?

A. I think it was the 1st of June and the 1st of November or first of December. I mean he paid [76] half of it the 1st of June and the other half the first of November or December, I don't know which.

(Testimony of Robert A. Fatjo.)

Q. In 1934 the rental was \$2000 a year?

A. Yes, sir.

Mr. Mathewson: That is all.

Recross Examination.

Mr. O'Connor: Q. One further question, please, Mr. Fatjo. It has been your practice for a number of years, has it not, since this ranch has been leased by the Doughertys, to go there on occasions with your family? A. Yes.

Q. Do you recall during the period of time from October, 1934 until June, 1935, whether or not you went down to the premises?

A. Yes, we used to go down on barbecues, once in a while.

Q. You would have your barbecues outside of the house; isn't that correct?

A. Yes, there is a barbecue pit.

Q. And the barbecue pit is near where the horse barn is; isn't that correct? A. Yes.

Q. On any occasion that you were down there, did you see any still? You didn't see any still on those premises, did you?

A. I never went into the barn.

Q. And you didn't smell any odor of alcohol coming from the premises, did you?

A. No, sir.

Mr. O'Connor: That is all.

(Testimony of Robert A. Fatjo.)

Further Redirect Examination.

Mr. Mathewson: Q. Do you recollect what period of time you were down there?

A. We were going to go down there the day that it came out in the newspapers there that there was a lot of trouble down there; we were going to go down to a barbecue that day or the following Sunday, because I remember reading it in the papers.

Q. Had you been down there that year previous to that time? A. Yes.

Q. When?

A. I don't know; we generally go down in the spring [77] time when things are green.

Q. Have you any idea what month?

A. No.

Q. You don't know when it was?

A. No; I know we were going down again at the time when it came out in the newspapers about the trouble down there.

Mr. Mathewson: That is all.

Mr. O'Connor: That is all, Mr. Fatjo.

PHILIP S. GEORGE,

Called as a witness for the Defendant; Sworn.

The Clerk: Please state your full name to the Court. A. Philip S. George.

Direct Examination.

Mr. Mathewson: Q. Where do you reside, Mr. George? A. At Salinas.

Q. What is your occupation?

A. Sales Manager, Pacific Gas & Electric Company.

Q. Where?

A. At Salinas and vicinity.

Q. How long have you held that position with that company?

A. I have been with the company 22 years, approximately.

Q. What are your duties as Sales Manager?

A. Well, I would say just what the name implies—the title implies, the signing up of new business, promotion of new business for the company, and taking care of matters of public relations, and a lot of other things in connection with—

Q. Does it include supervision of accounts?

A. It does not.

Q. Do you have custody of the records of the accounts? A. I do not, no.

Q. Do you have custody of applications for power?

A. Not the final applications. When they are

(Testimony of Philip S. George.)

first secured, yes, but after [78] they are secured, no.

Q. You say you do not have custody of the final applications?

A. What I mean is that we do not keep the records in my office of the applications for service after they are secured. In other words, the application is taken; it is either handed over the service counter or if it is a contract agreement it goes back to our billing department, where they are kept on file.

Q. You were directed to bring with you to-day, were you not, applications for power delivered to the Dougherty ranch? A. I was.

Q. Did you bring any applications for power?

A. I did.

Q. May I see them? (Witness hands certain papers to counsel.)

Q. One of these applications for power, No. 35101, is dated April 30, 1935, bearing the signature of R. Bini; another application for power, dated November 5, 1934, numbered 34283, bearing the signature R. Bini, and the third, dated July 8, 1935, bearing No. 35197, bearing the signature F. A. Dougherty. Were you present at the time these applications were made, Mr. George?

A. I may have been, because those contracts are secured by various individuals.

Mr. O'Connor: Mr. Mathewson, do you want to offer those in evidence?

(Testimony of Philip S. George.)

Mr. Mathewson: Yes.

Mr. O'Connor: I have no objection to them.

The Court: They will be admitted and marked.

(The applications referred to were marked "Defendant's Exhibit B" in evidence.)

DEFENDANT'S EXHIBIT B

No. 35-101

Pacific Gas and Electric Company AGREEMENT FOR ELECTRIC SERVICE

This Agreement, made by and between the Pacific Gas and Electric Company, a corporation organized under the laws of the State of California, hereinafter called the "Power Company," and R. Bini hereinafter called the "Consumer," Witnesseth that the Power Company hereby promises to sell and deliver to the Consumer, and the Consumer hereby promises to purchase from the Power Company, during the term hereof, all of the electric energy which shall be required for the operation of the Consumer's electrical machinery and apparatus, and in the conduct of the Consumer's business upon the Consumer's premises situate River Road, approximately 11 miles Southwest of Salinas, County of Monterey, State of California, all in accordance with the rules and regulations duly and regularly established from time to time by or under authority of law and on file with the Railroad Commission of

(Testimony of Philip S. George.)

California and relating to the furnishing by the Power Company of electric service.

All electric energy to be delivered and received pursuant to the provisions of this contract shall be what is commonly designated as three phase, 60 cycle alternating current and shall be delivered and metered at an electro-motive force of approximately 230 volts, slight variations in frequency and electro-motive force to be allowed.

All electric energy which shall be delivered by the Power Company to the Consumer under the provisions of this contract shall be paid for monthly by the Consumer at the office of the Power Company in Salinas, California upon presentation to the Consumer of a bill therefor.

The rates and charges to be paid by the Consumer for electric energy and service furnished hereunder shall be the rates and charges duly and regularly established from time to time by or under authority of law and applicable to the furnishing of electric energy and service to the Consumer under the conditions existing from time to time within the district in which said premises are situate.

The Consumer hereby selects, for the service herein specified, Schedule No. P-13, (a copy of which is hereunto annexed), the rates and charges specified in which are legally established and applicable to the service requested by the Consumer, to-wit: irrigation formerly—F. Dougherty

The Consumer agrees that the rated capacity of the electric machinery and apparatus initially in-

(Testimony of Philip S. George.)

stalled for operation, and thereafter operated hereunder during the term hereof, shall not be less than Light..... K. W. Heat..... K. W. Power 3 H. P.

The Consumer, in the event of selling, leasing or otherwise disposing of said premises or the business in which such energy is used, may, with the Power Company's written consent, assign this contract to the lessee or purchaser thereof, if such lessee or purchaser will in writing assume and covenant to perform this contract.

Consumer hereby grants Power Company a right of way over the shortest practicable route for any pole lines which it may be necessary to build over Consumer's premises for the purposes of making delivery hereunder.

This contract shall continue in force until the expiration of the term of one year from and after date of first service, and thereafter until terminated by thirty (30) days' written notice given by either party hereto to the other of a desire for such termination.

Such energy shall be delivered by the Power Company to the Consumer from the Power Company's transformers at a convenient place to be designated by the Consumer, subject, however, to the approval of the Power Company, and delivery of energy and service hereunder shall commence on date of first service.

This contract shall at all times be subject to such changes or modifications by the Railroad Commission of California, as said Commission may, from

(Testimony of Philip S. George.)

time to time, direct in the exercise of its jurisdiction.

In Witness Whereof the parties hereto have executed these presents in duplicate this 30 day of April, 1935.

PACIFIC GAS AND ELECTRIC
COMPANY,

By F. W. SNELL,
Division Manager.

R. BINI

(Consumer's Signature)

General Delivery, Salinas, Cal.

Acct. #S28-400

Meter #2026

M.O. #81287—370

GEC

No. 34-283

Pacific Gas and Electric Company
AGREEMENT FOR ELECTRIC SERVICE

This Agreement, made by and between the Pacific Gas and Electric Company, a corporation organized under the laws of the State of California, hereinafter called the "Power Company," and R. Bini hereinafter called the "Consumer," Witnesseth that the Power Company hereby promises to sell and deliver to the Consumer, and the Consumer hereby promises to purchase from the Power Company, during the term hereof, all of the electric energy which shall be required for the operation of the Consumer's electrical machinery and apparatus,

(Testimony of Philip S. George.)

and in the conduct of the Consumer's business upon the Consumer's premises situate Frank Daugherty Ranch, Salinas-Chualar River Road, County of Monterey, State of California, all in accordance with the rules and regulations duly and regularly established from time to time by or under authority of law and on file with the Railroad Commission of California and relating to the furnishing by the Power Company of electric service.

All electric energy to be delivered and received pursuant to the provisions of this contract shall be what is commonly designated as three phase, 60 cycle alternating current and shall be delivered and metered at an electro-motive force of approximately 230 volts, slight variations in frequency and electro-motive force to be allowed.

All electric energy which shall be delivered by the Power Company to the Consumer under the provisions of this contract shall be paid for monthly by the Consumer at the office of the Power Company in Salinas, California upon presentation to the Consumer of a bill therefor.

The rates and charges to be paid by the Consumer for electric energy and service furnished hereunder shall be the rates and charges duly and regularly established from time to time by or under authority of law and applicable to the furnishing of electric energy and service to the Consumer under the conditions existing from time to time within the district in which said premises are situate.

The Consumer hereby selects, for the service herein specified, Schedule No. P-3, (a copy of which is

(Testimony of Philip S. George.)

hereunto annexed), the rates and charges specified in which are legally established and applicable to the service requested by the Consumer, to-wit: domestic water supply formerly—Frank A. Daugherty

The Consumer agrees that the rated capacity of the electric machinery and apparatus initially installed for operation, and thereafter operated hereunder during the term hereof, shall not be less than
 Light..... K. W. Heat..... K. W. Power 3 H. P.
 exp 11-5-35 BM

The Consumer, in the event of selling, leasing or otherwise disposing of said premises or the business in which such energy is used, may with the Power Company's written consent, assign this contract to the lessee or purchaser thereof, if such lessee or purchaser will in writing assume and covenant to perform this contract.

Consumer hereby grants Power Company a right of way over the shortest practicable route for any pole lines which it may be necessary to build over Consumer's premises for the purpose of making delivery hereunder.

This contract shall continue in force until the expiration of the term of one year from and after Nov. 5, 1934, and thereafter until terminated by thirty (30) days' written notice given by either party hereto to the other of a desire for such termination.

Such energy shall be delivered by the Power Company to the Consumer from the Power Company's transformers at a convenient place to be designated by the Consumer, subject, however, to the

(Testimony of Philip S. George.)

approval of the Power Company, and delivery of energy and service hereunder shall commence on Nov. 5, 1934.

This contract shall at all times be subject to such changes or modifications by the Railroad Commission of California, as said Commission may, from time to time, direct in the exercise of its jurisdiction.

In Witness Whereof the parties hereto have executed these presents in duplicate this 5 day of November, 1934.

PACIFIC GAS AND ELECTRIC
COMPANY,

By F. W. SNELL,
Division Manager.

R. BINI

(Consumer's Signature)

General Delivery, Salinas, Calif.

Acct. #S28

S28-370

M.O. 76101

GEC

No. 35-197

Pacific Gas and Electric Company

AGREEMENT FOR ELECTRIC SERVICE

This Agreement, made by and between the Pacific Gas and Electric Company, a corporation organized under the laws of the State of California, hereinafter called the "Power Company," and F. A. Dougherty hereinafter called the "Consumer," Witnesseth that the Power Company hereby promises

(Testimony of Philip S. George.)

to sell and deliver to the Consumer, and the Consumer hereby promises to purchase from the Power Company, during the term hereof, all of the electric energy which shall be required for the operation of the Consumer's electrical machinery and apparatus, and in the conduct of the Consumer's business upon the Consumer's premises situate River Road, approximately 12 miles South of Salinas, County of Monterey, State of California, all in accordance with the rules and regulations duly and regularly established from time to time by or under authority of law and on file with the Railroad Commission of California and relating to the furnishing by the Power Company of electric service.

All electric energy to be delivered and received pursuant to the provisions of this contract shall be what is commonly designated as three phase, 60 cycle alternating current and shall be delivered and metered at an electro-motive force of approximately 230 volts, slight variations in frequency and electro-motive force to be allowed.

All electric energy which shall be delivered by the Power Company to the Consumer under the provisions of this contract shall be paid for monthly by the Consumer at the office of the Power Company in Salinas, California upon presentation to the Consumer of a bill therefor.

The rates and charges to be paid by the Consumer for electric energy and service furnished hereunder shall be the rates and charges duly and regularly established from time to time by or under authority of law and applicable to the furnishing of electric

(Testimony of Philip S. George.)

energy and service to the Consumer under the conditions existing from time to time within the district in which said premises are situate.

The Consumer hereby selects, for the service herein specified, Schedule No. P-13, (a copy of which is hereunto annexed), the rates and charges specified in which are legally established and applicable to the service requested by the Consumer, to-wit: power for domestic pumping formerly—R. Bini

The Consumer agrees that the rated capacity of the electric machinery and apparatus initially installed for operation, and thereafter operated hereunder during the term hereof, shall not be less than
Light..... K. W. Heat..... K. W. Power 3 H. P.

exp 6-20-36 AK

The Consumer, in the event of selling, leasing or otherwise disposing of said premises or the business in which such energy is used, may, with the Power Company's written consent, assign this contract to the lessee or purchaser thereof, if such lessee or purchaser will in writing assume and covenant to perform this contract.

Consumer hereby grants Power Company a right of way over the shortest practicable route for any pole lines which it may be necessary to build over Consumer's premises for the purpose of making delivery hereunder.

This contract shall continue in force until the expiration of the term of one year from and after June 20, 1035, and thereafter until terminated by thirty (30) day's written notice given by either

(Testimony of Philip S. George.)

party hereto to the other of a desire for such termination.

Such energy shall be delivered by the Power Company to the Consumer from the Power Company's transformers at a convenient place to be designated by the Consumer, subject, however, to the approval of the Power Company, and delivery of energy and service hereunder shall commence on June 20, 1935.

This contract shall at all times be subject to such changes or modifications by the Railroad Commission of California, as said Commission may, from time to time, direct in the exercise of its jurisdiction.

In Witness Whereof the parties hereto have executed these presents in duplicate this 8 day of July, 1935.

PACIFIC GAS AND ELECTRIC
COMPANY,

By F. W. SNELL,
Division Manager.

F. A. DOUGHERTY

(Consumer's Signature)

Rte. 1, Box 292

Salinas

Acct. #S28-370 Meter #3469

M.O. 83498

GEC

[Endorsed]: Deft's Ex. B. Filed June 13, 1939.
Walter B. Maling, Clerk. By J. A. Schaertzer,
Deputy Clerk.

(Testimony of Philip S. George.)

Mr. Mathewson: Q. Mr. George, did you make a search for an application for power bearing the date of January 31, 1935 and the signature of Frank Dougherty? A. Yes.

Q. Did you find any such application for power?

A. I was unable to locate it. [79]

Q. Did you make an examination of your accounts, or did you make an examination of the account of Frank A. Dougherty? A. Yes.

Q. Do your records show the consumption of power by Frank A. Dougherty on meter No. 3469, commencing with January 31, 1935?

Mr. O'Connor: That is objected to upon the ground that it is incompetent, irrelevant, and immaterial, and the records are the best evidence, and the proper foundation has not been laid in this——

The Court: Q. Have you the record?

A. I haven't the record with me, no, sir.

Q. Where are they?

A. I was required to bring the applications for service, which I did.

Q. Have you knowledge of it, yourself?

A. I might state that the space of time between the two Bini applications, there, the account was in the name of Frank Dougherty.

Mr. O'Connor: I move that that go out on the ground that it is incompetent, immaterial and irrelevant, not the best evidence.

(Testimony of Philip S. George.)

The Court: You are entitled to the best evidence if it is available. Is it available?

A. It is in Salinas.

Mr. Mathewson: No further questions.

Mr. O'Connor: No cross-examination.

EDWARD C. HARKINS,

called as a witness for defendant; sworn.

The Clerk: Please state your full name to the Court.

A. Edward C. Harkins.

Direct Examination

Mr. Mathewson: Q. Mr. Harkins, you are an agent of the Alcohol Tax Unit? A. I am.

Q. Were you an agent acting as such in May, 1935? A. I was.

Q. Did you participate in the investigation that culminated in the [80] seizure of a distillery on the Dougherty Ranch on June 3, 1935?

A. I did.

Q. The seizure took place on the 3rd of June, 1935? A. That is correct, yes.

Q. Did you have the Dougherty Ranch under observation prior to that date?

A. I did, yes.

Q. When did you have it under observation prior to June 3rd?

(Testimony of Edward C. Harkins.)

A. Particularly on May 31st, 1935, but we had been engaged for—Investigator Myers and I had been engaged for a couple of weeks in trailing a car to these premises prior to that.

Q. What did you observe on May 21st, 1935?

Mr. O'Connor: That is objected to on the ground that it is incompetent, irrelevant and immaterial.

The Court: Read the question, Mr. Reporter.

(The reporter read the question.)

The Court: May 21st. I will allow it.

A. I observed a Ford—a grey Ford—a grey Plymouth coach, license 8H 8305 of that current year enter the north gate on the Dougherty ranch about 7:15 p.m., the car incidentally which we had been following. I also obtained a strong odor of mash from the road and from the field to the south of the ranch. I also observed a truck on the same evening go in the south gate of the ranch.

Q. You say you observed an odor of fermentation? A. I did, yes.

Q. How far were you from the ranch at the time you noticed it?

A. Well, from the River Road, it would be a matter of about 300 yards, to the best of my recollection.

Q. What time of the evening was this?

A. The Plymouth coach entered the north gate at about 7:15 p.m.

Q. Did you have the premises under observation on any time after May 21st?

(Testimony of Edward C. Harkins.)

A. Yes, on—that was May 31st. On June 1, in the afternoon, with Investigator Myers, I observed—that is, we were [81] driving by on the River Road; I observed a man in front of Dougherty's house, which I later—who I later recognized as George Harrison, who was arrested on the evening of the seizure.

Q. And the date of that observation was what?

A. I believe—I am not exactly positive, but I think that was June 1st in the afternoon. It was prior to the seizure, at any rate.

Q. When did you next have the place under observation? A. On the night of June 3rd.

Q. Will you relate what transpired on that evening?

A. Yes, with other investigators—there were several in the party—we approached the premises from the south. From a distance of about a quarter of a mile we could get the odor of fermenting mash.

Q. What time of the day or night was that?

A. We made the seizure about 9:05 p.m., so it was shortly prior to 9:05 p.m. And approaching closer, somewhat closer,—within a hundred or two hundred yards, we could hear the noise of burners. We surrounded the barn and arrested a man giving the name of Dante Brunzo operating the still at that time. A few minutes later, about 9:15, a truck was driven in and we arrested Rodoni,

(Testimony of Edward C. Harkins.)

and the truck driver, and George Harrison, who was walking behind the truck. At about 9:30 p.m., Investigator Shanks and I went over to the front of the Dougherty house, the residence. The door was open, the screen door, however, was there, and Dougherty was sitting inside in plain view. I told him that we were Federal officers, asked him if he owned the ranch. He said, "Yes." I said, "Well, you are under arrest." He said, "What for, that thing over there? I have got a lease," and he produced the lease at that time to show us the lease that he had.

Q. I show you Plaintiff's Exhibit No. 1 in evidence and ask you if you recognize that document.

A. Yes, this is the lease that he produced at that time. [82]

Q. That is the lease that Mr. Dougherty produced at the time of his arrest? A. Yes.

Q. After Mr. Dougherty produced the lease, what happened?

A. We took him over to the barn in a few minutes, where we had the other defendants, left him there. Then Investigator Shanks went to a cabin that is in back of the Dougherty house, slightly north, where we saw Mr. Myers put a man giving the name Guiseppi Guinto under arrest.

Mr. Mathewson: That is all.

(Testimony of Edward C. Harkins.)

Cross Examination

Mr. O'Connor: Q. Now, Mr. Harkins, you went to the premises known as the Dougherty Ranch on the evening or the night of June 3, is that correct? A. June 3, that is correct, yes.

Q. What time did you enter the building where the still was? A. About 9:05 p.m.

Q. Who was with you?

A. Well, I went in alone.

Q. What other agents accompanied you to the premises?

A. Present at the raid there on the barn there was Investigator Myers, Investigator Byrd, Investigator Shanks, and Investigator Blair.

Q. After you made your seizure of the still and arrest of whomever you arrested in the still premises, I understand that you and Investigator Shanks went to the Dougherty ranch house; is that correct?

A. Not immediately. We arrested Truck Driver Harrison before going to the ranch house.

Q. After you completed the arrest of the persons who were immediately identified with the still, you and Investigator Shanks did go to the ranch house; that is correct? A. Yes, sir.

Q. When you got to the ranch house how did you approach it, from the front or the rear, or how?

A. We went up—we walked around the ranch house, but we went up the front porch on the premises. [83]

(Testimony of Edward C. Harkins.)

Q. Did you walk around the ranch house from the front or from the rear?

A. From the rear.

Q. You came around towards the front porch?

A. That's it, yes.

Q. Entered the room that would be on the north side of the ranch house; is that correct?

A. Well, it would be on the side facing the River Road, which I believe is the northeast side.

Q. When you got there was the door open or closed? A. The front door was open.

Q. There was a screen door closed, was there?

A. The screen door was closed.

Q. You opened that door?

A. I beg pardon?

Q. You opened the screen door?

A. Not me.

Q. Did you speak to the man inside first?

A. We spoke to Dougherty, yes.

Q. What did you tell him?

A. I said, "We are Federal officers. Do you own this ranch?" He said, "Yes."

Q. He said he owned the ranch?

A. He did.

Q. And then what did you say?

A. We said, "You are under arrest for that still in the barn."

Q. You said, "You are under arrest for the still in the barn"?

A. Yes.

(Testimony of Edward C. Harkins.)

Q. As I understand it, you said, "We are Federal officers. Do you own that ranch?" And he said, "Yes."

A. No, I said, "We are Federal officers. Do you own this ranch?"

Q. Yes. And he said he did.

A. He said he did.

Q. Then you said, "You are under arrest for that still in the barn"?

A. Yes; words to that effect.

Q. You said that? A. Yes.

Q. You are the first one to mention "still"?

A. I beg your pardon?

Q. You were the first one to mention the word "still"?

A. I am not [84] sure about the "still", but I said, "You are under arrest."

Q. Now you just a moment ago told us that you said, "You are under arrest for that still in the barn." Did you say that or did you not?

A. No; to the best of my recollection I did not.

Q. You did not? A. Yes.

Q. So a moment ago when you said that you did, you were incorrect? A. I was mistaken.

Q. What did Dougherty say when you told him then that he was under arrest?

A. He said, "What, for that thing over there? I have got a lease."

Q. He said, "I have got a lease"?

(Testimony of Edward C. Harkins.)

A. Yes.

Q. Are those his exact words?

A. To the best of my recollection.

Q. Well, what did you say to him?

A. I said, "Well, I don't care how many leases you have; you are under arrest," and he then got up to get the lease, which he did.

Q. And did he show you the lease?

A. He did. He also said at that time, "I just rented the place to them; I have got nothing to do with it.

Q. In other words, he denied any connection with the still? Did he deny that he knew any still was there?

A. He did later when he was questioned.

Q. But on this first occasion he, after you had this conversation, got up and got the lease?

A. Yes, that is correct.

Q. Now, I call your attention to your testimony before the United States Commissioner on Saturday, June 8, 1935, page 9, in case you have got a copy of it. Directing your attention to page 9, beginning where I have marked it, here, down to there (indicating), and ask you to read that (handing transcript to witness). And I also direct your attention to page 7 of the same transcript and ask you to read where marked beginning on page 7 and continuing down to where marked on page 8. Now, Mr. Harkins, I ask you if on June 8, 1935, you [85] were asked the following questions before Ernest E. Wil-

(Testimony of Edward C. Harkins.)

liams, United States Commissioner for the Northern District of California, and if you gave the following answers:

“Q. Who was present when you first talked to Dougherty? A. Investigator Shanks.

“Q. What was the conversation you had with Dougherty when you first talked to him?

“A. I have already mentioned it. I went to the door and told him we were Federal officers and that he was under arrest.

“Q. Did you open the door.

“A. I did. We went to the door and spoke to him from outside and went in. I don't remember whether Shanks or I went in first.

“Q. You went to the door? A. Yes.

“Q. Was the door closed?

“A. The screen door was closed. I could see him inside.

“Q. But was the door closed?

“A. Yes.

“Q. And you opened the door and walked in? A. Yes.

“Q. Which one went in first?

“A. I don't recall.

“Q. And you told him he was under arrest?

“A. I told him we were Federal officers and he was under arrest.

“Q. What did he say?

“A. He said, ‘What, for that thing over there? I have a lease.’

(Testimony of Edward C. Harkins.)

“Q. What else was said?

“A. I said, ‘I don’t care how many leases you have got; you are under arrest,’ and he said, ‘I have nothing to do with it; I just rented them the land.’

“Q. What did you say to that?

“A. I don’t recall. We told him to come on, and we went from there.

“Q. Did you immediately take him out of the house?

“A. In a few minutes, yes.

“Q. Did you bring him back to the house again? A. Yes.”

Did you so testify?

A. I believe it is substantially correct. [86]

Q. Now, then directing your attention to your testimony before the same Commissioner on the same day, at page 9 of the transcript, I ask you if you were asked these questions and if you gave these answers:

“Q. And he did not tell you the first time he knew the still was there when you people put him under arrest?

“A. I don’t recall exactly; I presume he did.

“Q. You say you presume he did. Do you know whether he did?

“A. I know he denied any knowledge of it.

(Testimony of Edward C. Harkins.)

“Q. And didn’t he voluntarily surrender to you the lease he had for this particular twenty acres of land?

“A. When we went back to the house he showed me the lease and I said if he would give it to me I would see that it was returned to him.

“Q. When did he show you the lease—on the first occasion you went to the house or the second occasion?

“A. To the best of my recollection he got the lease the first occasion.”

So that if you testified before the United States Commissioner that he got the lease and gave you the lease on the second occasion when you went back there you were incorrect; is that correct?

A. Well, I would say that I believe he showed—it is a long time ago; the best of my recollection is that he got the lease, showed us the lease the first time, but gave it to us the second time. We didn’t take it, I believe, at that time.

Q. Now, at that time after you talked with Dougherty he completely denied any knowledge that there was a still on those premises, didn’t he?

A. He did, yes.

Mr. O’Connor: That is all.

Mr. Mathewson: That is all. [87]

FRED L. MYERS,

called for the defendant; sworn.

The Clerk: Q. Please state your full name to the Court.

A. Fred L. Myers.

Direct Examination

Mr. Mathewson: Q. Mr. Myers, you are an agent of the Alcohol Tax Unit?

A. I am, yes, sir.

Q. And you were acting as such in May, 1935?

A. I was, yes, sir.

Q. Did you participate in the investigation that culminated in the seizure of a distillery on the Frank Dougherty Ranch on June 3, 1935?

A. I did, yes, sir.

Q. Did you, previous to June 3, 1935, have the Dougherty Ranch under observation?

A. I did, yes, sir.

Q. When?

A. Between the dates of May 14th and June 1st.

Q. Between the dates of May 14th and June 1st?

A. That is correct, yes, sir.

Q. From what place or places did you have the Dougherty Ranch under observation on those dates?

A. The Dougherty Ranch, itself, was called to my attention by Investigator Harkins on June 1st—May 31st he was dropped off by me while we drove by the premises in that immediate vicinity. I, myself, covered both approaches, one located

(Testimony of Fred L. Myers.)

seven miles—about seven miles north of the Dougherty Ranch, and one located about three miles south of the Dougherty Ranch.

Q. Calling your attention to the evening of June 3, 1935, will you relate what happened at the time that you went upon the premises of the Dougherty Ranch?

A. Subsequent to the seizure, Mr. Mathewson?

Q. Previous to the seizure.

A. We parked our cars about a mile away south of the premises, crossed through the open fields and approached the Dougherty Ranch from the south. About a quarter of a mile [88] from the Dougherty Ranch, itself, we could hear a pump—mechanical pump—working. When about 150 to 200 yards from the ranch premises we could obtain the odor of fermenting mash. In circling the barn Investigator Harkins entered the premises. I followed soon after and placed Brunzo, who was operating the still at that time, under arrest.

Q. Mr. Myers, of what did the still consist?

A. It was a large still, about 25,000 gallons of mash, a 1000-gallon cooking pot, steam boiler, and about five or six hundred gallons of alcohol.

Q. Was the mash contained in one or more tanks?

A. Six vats, I believe.

Q. Six vats? A. Yes, large vats.

Q. Do you know how large the still, itself, was?

A. It turned out about 500 gallons a day, I should think.

(Testimony of Fred L. Myers.)

Q. After the arrest of Mr. Brunzo—was he the one arrested in the still?

A. Operating the still proper, yes.

Q. After the arrest of Mr. Brunzo, what happened?

A. A few moments later—about ten minutes later, about quarter after nine, a truck drove onto the premises on the south road with its lights out. We allowed this truck to approach up to the still, proper. Investigator Harkins, and Shanks, and myself, placed the driver under arrest. I stayed behind and arrested Harrison, who came walking up from the *date* at the River Road. When he was within a matter of forty or fifty feet of the still I placed him under arrest.

Q. Did you search Mr. Harrison?

A. I did not; no, sir.

Q. After the arrest of Mr. Harrison, what did you do?

A. I was in the still premises with Brunzo. He was arrested first, and the matter of changing his clothes came up. I followed him from the still premises north on what appeared to be a well-traveled path about 80 to 90 yards to a cabin, where the defendant Longo was [89] asleep. I placed Longo under arrest, and was soon joined by Harkins and Shanks.

Q. What was the relation between the cabin where you found Longo asleep and the house on the Dougherty ranch?

(Testimony of Fred L. Myers.)

Mr. O'Connor: That is objected to upon the ground that it calls for the opinion and conclusion of the witness.

The Court: Objection sustained. Proceed.

Mr. Mathewson: Q. How far was the house in which you arrested Longo from the residence on the ranch? A. About 20 yards, sir.

Q. About 20?

A. Yes, sir; it was slightly past the ranch house, I should say west by north of the ranch house, itself.

Q. With reference to the ranch house, where did the path from the barn to the ranch house where Longo was arrested pass?

A. In the rear of the ranch house, but separated by a fence or enclosure—a building. There was another building between the path and the ranch house, a chicken shed, or something of that sort.

Q. Did you see the Dougherty ranch premises in daylight? A. Just recently, sir.

Q. I show you a picture of the Dougherty ranch, and ask you if you can indicate on that picture, if you can, the approximate location of the house where you arrested Longo?

A. It is not shown here, Mr. Mathewson.

Q. Well, can you indicate the direction from any of the structures shown there?

A. Yes, sir; it should be setting over here where my thumb is.

(Testimony of Fred L. Myers.)

Q. It was beyond the range of the picture?

A. Yes, sir.

Q. Beyond the range of that picture?

A. Yes.

Q. Beyond this building and over here?

A. That is correct; and slightly to the west.

Q. Slightly to the west?

A. We are looking, as I recall it, from [90] the west to the east, there.

Q. This structure on the left-hand side is the residence on the ranch?

A. The large structure, yes, sir.

Q. And the structure on the right-hand side is the——

A. Horse barn where the still was located.

Mr. Mathewson: If your Honor please, I ask that Defendant's Exhibit A for identification be admitted in evidence.

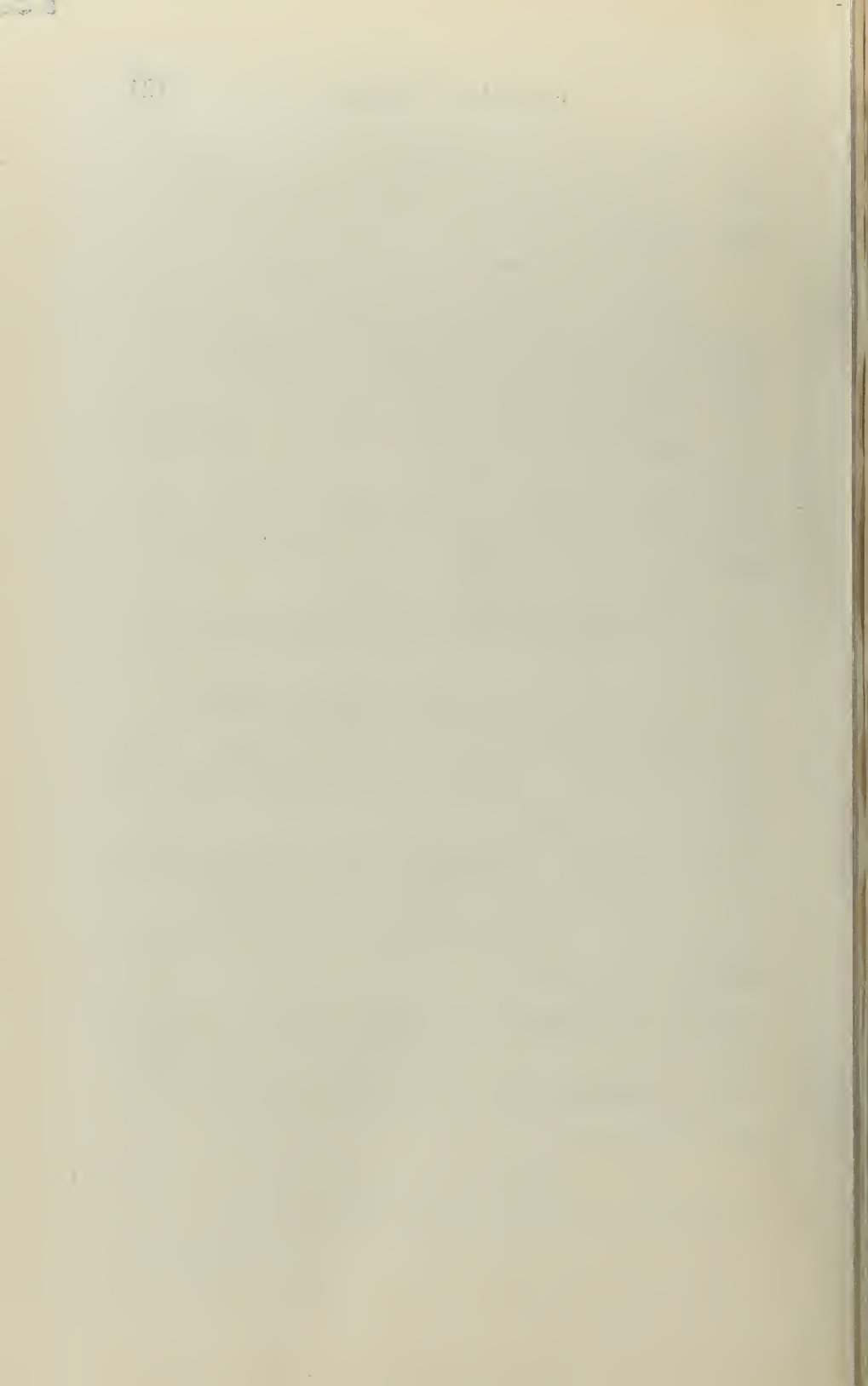
Mr. O'Connor: Objected to upon the ground that it is incompetent, irrelevant, and immaterial.

The Court: Objection overruled. Let it be admitted and marked.

(The photograph heretofore marked "Defendant's Exhibit A for identification" was admitted in evidence and marked "Defendant's Exhibit A.")

(10)

1000





ON 349 ST. N.F.D. # 1 Salinas Calif
Photographed June 3rd. 1939 by
Walter A. Patterson
Investigator

20425-R
Deft's Exhibit A
for Identification
6/13/39.

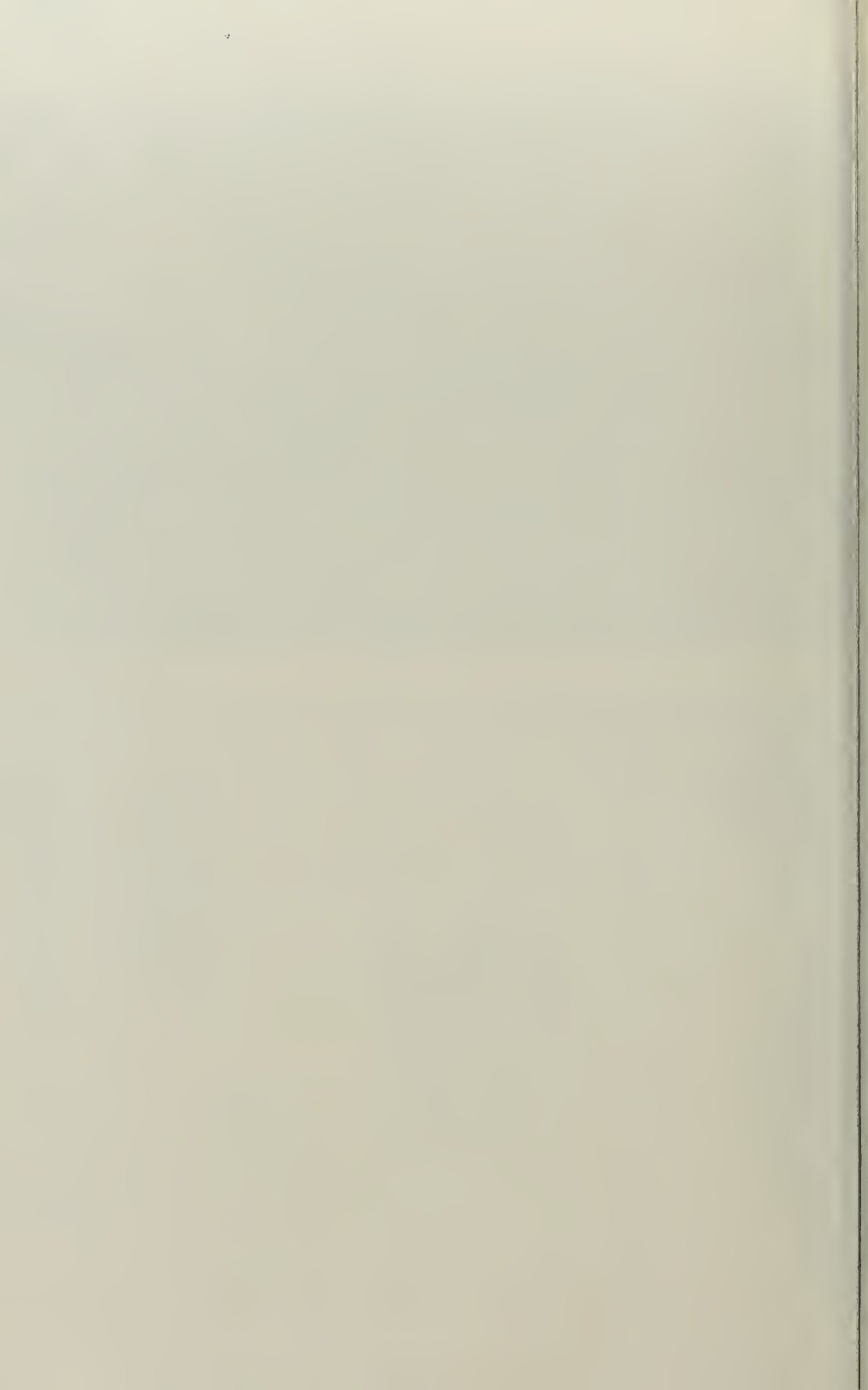
CASE 3814-M - EXHIBIT #3

U. S. DIST. CT. N. D. CAL.
No. 20425-R
Dougherty vs. Lewis
Deft's EX. No. A
FILED June 13, 1939

WALTER B. MALING, CLERK
BY *J. J. Schaefer*
BY *J. J. Schaefer*
DEPT. OF JUSTICE

9492
U. S. DIST. CT. N. D. CAL.
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT
FILED
APR 15 1940

PAUL P. O'BRIEN
CLERK



Mr. Mathewson: That is all.

Mr. O'Connor: No questions.

CLAUDE M. SHANKS,

called for the defendant; sworn.

The Clerk: Please state your full name to the Court.

A. Claude M. Shanks.

Direct Examination

Mr. Mathewson: Q. Mr. Shanks, you are an agent of the Alcohol Tax Unit? A. Yes, sir.

Q. Did you participate in the seizure of a distillery on the Dougherty Ranch on June 3, 1935?

A. I did.

Q. Will you relate your participation in the seizure?

A. I approached, as has been stated, with the rest of the men, heard the pump running, *bot* the odor of distillation. I was one of the men—

Q. From what point did you obtain the odor of distillation? [91]

A. Oh, I would say 300 yards. It was dark. It was pretty close.

Q. Where were you when you obtained this odor?

A. Coming through a field where there was cut grain shocked. It was south and east—possibly a little east—of the barn where we seized the still.

Q. All right. Proceed.

(Testimony of Claude M. Shanks.)

A. I was on the outside. I was present when the truck driver was arrested. I was present when Myers brought Harrison up from following the truck. I was present when Dougherty was arrested.

Q. What happened at the time of Dougherty's arrest?

A. We went—this path that runs to the back part of the house, it was a well worn path. I and Investigator Harkins followed this path around; we went through a gate, and to my recollection that portion, it would be west of the house, around to the front. There was a light in there. Investigator Harkins went up to this door, which was a screen door, and said, "Federal officers," asked him if he owned the ranch, and he said he did. He told him he was under arrest. We entered. And Dougherty said, "What, for that thing over there?"—pointing. He says, "I have a lease." I asked Dougherty for the lease. There was some more conversation irrelevant. Dougherty was searched at that time. I took a pocket knife away from him, and I asked him for the lease, and my recollection is that he handed me the lease and I passed it to Harkins. We then taken him to the still barn. I wasn't present when he was questioned.

Q. Had you gone into the still barn before you went up to Dougherty's place?

A. No, sir, I had not. I had been outside watching all the time. I hadn't been into the still premises yet.

(Testimony of Claude M. Shanks.)

Q. Do you remember whether or not you observed the odor of distillation at Dougherty's house?

A. Oh, yes, the odor of distillation was plain. We obtained it a considerable distance out in the field. We could hear the pumps; we could hear the burner going; there [92] was no question in anyone's mind but what there was a still there.

Mr. O'Connor: I move that that that go out as not binding on the plaintiff.

The Court: It may go out.

Mr. Mathewson: Q. Were you present at Harrison's arrest?

Mr. O'Connor: The latter part of that answer I move go out about their being no question in anybody's mind.

The Court: It may go out. "No question in anybody's mind" may go out.

Mr. Mathewson: Q. Were you present at the time of the arrest of Mr. Harrison?

A. No, I was not. He came up behind the truck and I was at the truck when that arrest was made.

Mr. Mathewson: That is all.

Cross Examination

Mr. O'Connor: Q. Mr. Shanks, do you know whether or not, or are you certain whether or not the lease was given to you and investigator Harkins on your first visit to the Dougherty house, or when you returned to the Dougherty house?

A. I am very positive that I asked for that lease

(Testimony of Claude M. Shanks.)

at that time, and I handed it to Investigator Harkins on that first trip.

Q. No doubt in your mind about that?

A. There is no doubt, no, sir, in my mind.

Q. And he produced the lease at that time?

A. I asked him to produce the lease.

Q. Didn't he deny that he had any knowledge of a still being on those premises?

A. I wasn't present when he was questioned, but his remark was, when he says, "What, for that thing over there? I have a lease."

Q. Didn't he deny at that same time that he had any knowledge of the still being there?

A. He did not, not in my presence. I wasn't [93] present when he was questioned.

Q. Wait a minute. I mean on the first occasion when you were there.

A. No, he did not.

Q. If Investigator Harkins testified that he did deny it on the first occasion when you were there, would he be incorrect?

A. Not to my knowledge.

Q. Would you say that he did or did not?

A. He did not.

Q. Or that you did not hear it?

A. If he did, I didn't hear it.

Mr. O'Connor: That is all.

The Court: We will take an adjournment until two o'clock.

(A recess was here taken until two o'clock p. m.)

[94]

Afternoon Session

Mr. Mathewson: If your Honor please, at this time, if it is permissible, I should like to take three witnesses out of order, witnesses for expert opinions as to the rental value of the property.

GUY J. PEDRONI,

called for the defendant; sworn.

The Clerk: Q. Please state your full name to the Court.

A. Guy J. Pedroni.

Direct Examination

Mr. Mathewson: Q. Where do you reside, Mr. Pedroni? A. Salinas.

Q. What is your business or occupation?

A. Assistant cashier Salinas National Bank in Salinas

Q. How long have you held that position?

A. Well, with this particular bank, I have been with them since August—no, August, 1930, but I have filled a similar position with the original First National Bank and subsequently Bank of Italy, and Bank of America.

Q. What are your duties at the bank?

(Testimony of Guy J. Pedroni.)

A. General duties of an assistant cashier.

Q. Do they include the duties of supervising the work of appraisers in your institution?

A. Yes, to some extent.

Q. What experience have you had in the appraising of property?

A. Well, I have had some experience. I pass on practically all of the loans—that is, I don't make the appraisal; I do pass on the loans as they are submitted.

Q. In passing on the loans, as they are submitted, do you take into consideration the appraisal as determined by the bank appraiser?

A. Yes, in a great measure, for the reason that they go right on the premises and they analyze the property, especially where there [95] are buildings on it, as to buildings on it, as to buildings.

Q. As a result of your experience in supervising the work of the appraisers, are you familiar with the rental values of farm properties in the vicinity of Salinas?

A. Somewhat, yes, sir.

Q. Are you familiar with the property known as the Frank Dougherty Ranch, about 12 miles southwest of Salinas?

Mr. O'Connor: Just a moment. If your Honor please, at this time I desire to examine the witness on his qualifications.

The Court: You may.

(Testimony of Guy J. Pedroni.)

Mr. O'Connor: Q. Do you do appraisal work, yourself, Mr. Pedroni?

A. Not altogether, no, sir.

Q. What do you mean "not altogether"?

A. I mean that isn't my job only. I do that along with other duties at the bank.

Q. I mean, do you actually go out and appraise property, yourself? A. I have, yes, sir.

Q. You what? A. I have.

Q. What type of property have you appraised, Mr. Pedroni?

A. Well, I have appraised ranch properties, and I have appraised homes.

Q. How long have you been doing that work?

A. Well, it hasn't been steady, but every time I am called upon.

Q. Say over a year, how often would you make an appraisal of the value of a piece of property?—I mean your own appraisal as distinguished from the appraisal or from passing on a loan that has been appraised by another appraiser at the bank? I mean your own actual appraisal of values.

A. As I am called on by the bank officers to go out.

Q. When was the last time you made an appraisal?

A. Oh, it has ben about two months, I guess.

Q. Did you make that appraisal yourself independent of any other appraiser?

(Testimony of Guy J. Pedroni.)

A. No, usually you have another member of the [96]—another officer of the bank.

Q. Was that for the purpose of passing on an application for a loan? A. That is right.

Q. Was it ranch property?

A. This happened to be a home, that last one.

Q. Happened to be a home? A. Yes.

Q. When is the last time you appraised any ranch property in the vicinity of Salinas?

A. It has been some little time; I guess probably six or eight months.

Q. At that time did you make an independent appraisal, yourself, or did you base your loan upon the work of some other appraiser?

A. Well, the appraisal was made by myself and the other officer of the bank.

Q. Did you examine the property?

A. Yes, sir.

Q. That was ranch property? A. Yes, sir.

Q. Within the period of the last five years how many pieces of ranch property would you say that you have appraised?

A. Well, approximately half a dozen.

Q. Half a dozen within five years. All of the appraisal work that you have done was for the purpose of passing upon loan applications pending before the bank by whom you were employed; isn't that correct? A. That is right.

Q. That is the only thing you had in mind when you made an appraisal?

(Testimony of Guy J. Pedroni.)

A. In connection with the bank for loan purposes.

Q. What is the extent of the normal limits of the percentage you would loan on a piece of property? What value—is it 40 per cent of the value, or 50 per cent of the value, or what?

A. That varies as to the income that the property can produce.

Q. What would be the top limit of your loan?

A. 50 per cent.

Q. What? A. 50 per cent. [97]

Q. 50 per cent would be the top limit?

A. Yes, sir.

Mr. O'Connor: That is all.

Mr. Mathewson: Q. Are you familiar with the Frank A. Dougherty property, located about 12 miles southwest of Salinas?

A. I know where it is located, yes, sir.

Q. Do you know the property?

A. I do. I haven't been on it, but I know what the property is. I have known it for a number of years.

Q. Are you familiar with property of similar nature and description in and around Salinas?

A. Yes, I think I am.

Q. Are you familiar with the rental values prevailing in that community for property of this same type and description as the Frank Dougherty property? A. I am.

Q. Are you in particular familiar with that por-

(Testimony of Guy J. Pedroni.)

tion of the Frank Dougherty property in front of the residence and down along the River Road?

A. I think I know the property, yes.

Q. Have you an opinion as to the rental value of approximately 20 acres of that property, including barn, corral, two small sheds, and the use of water for the purpose of feeding dry stock?

Mr. O'Connor: Just a moment. If your Honor please, I object to the question upon the ground that it is incompetent, irrelevant, and immaterial, and not within any of the issues of this case; and I make the further objection that the question as now framed does not take into consideration or identify the particular piece of property with which we are concerned and that it is too general. I submit both objections.

The Court: Q. You say you are familiar with this property?

A. I am.

Q. And this particular twenty acres?

A. As to that specific acreage, I don't know. I have an idea what the property is. [98]

Q. What do you mean by an idea?

A. Well, this portion here is part of a larger tract of land. Whether it is bounded by fences I am not able to say.

The Court: It goes to the weight of the testimony; I will allow it.

(The reporter read the last question asked by Mr. Mathewson.)

(Testimony of Guy J. Pedroni.)

Mr. Mathewson: Q. Have you an opinion, Mr. Pedroni?

A. Yes; the rental value is between \$10 to \$15 an acre. \$15 would be the very maximum.

Q. That includes the barn, corrals, sheds and the use of water? A. Yes, sir.

Q. That is an annual rental, Mr. Pedroni?

A. An annual rental.

Mr. Mathewson: That is all.

Cross Examination

Mr. O'Connor: Q. What do you mean by an annual rental? \$15 a year?

A. \$15 per acre a year.

Q. Now, what particular twenty acres are you referring to?

A. Well, any of that land in that vicinity there couldn't demand much more than that for the purpose,—

Q. What particular land are you referring to?

A. That particular 20 acres and adjoining—

Q. Where is that particular 20 acres?

A. This particular piece of land fronts on the River Road kind of southwest of Salinas, approximately ten or twelve miles, and does not go across the road. It is on the right side of the road. In other words, it is on the west side—southwest side.

Q. Have you been on the land?

A. I have been on the road, not on the land.

Q. When were you on the road?

A. About ten days ago.

(Testimony of Guy J. Pedroni.)

Q. Who were you with? A. Mrs. Pedroni.
[99]

Q. Who else? A. No one else.

Q. Well, how do you know what particular 20 acres was involved in this particular litigation?

A. From the description given here in this court this morning.

Q. From the description this morning?

A. Yes, sir.

Q. At the time that you made your appraisal did you know what particular 20 acres were involved?

A. I didn't make any appraisal. You asked me the question as to the value, and I think that piece of land is no exception to any other adjoining property, and that is the rental value.

Q. Do you know anything about the income from that particular land over a period of years?

A. No, I do not.

Q. Assuming, Mr. Pedroni, that that particular land, ten acres of it, were capable of producing 25 tons of hay a year. What is the average price of hay per ton, do you know?

A. On average crops?

Q. Yes.

A. In a good year, when it is a good crop, I would say that two tons to two and one-half tons would be the highest crop production that could be produced on any of that land there or adjoining, and that wouldn't be every year, it would have to be rotated.

(Testimony of Guy J. Pedroni.)

Mr. O'Connor: May I have that answer read?

(The reporter read the answer.)

Mr. O'Connor: Q. You mean per acre, don't you?

A. Per acre, yes.

Q. Assuming two and one-half tons per acre for ten acres, that would give you how many tons of hay? A. Well, it would give you 250 tons.

Q. Right. 250 tons of hay. What is the prevailing price of hay—the average price of hay per ton?

A. Well, at the present time I think it is in the neighborhood of ten or eleven dollars a ton.

Q. Do you know what it was in 1934?

A. No, I do not.

Q. Well, wouldn't the determination as to the rental value of that land during the year 1934 be dependent upon the ability of the land to [100] produce?

A. You can't adjust it based on any one particular year; it would have to be spread over years; you would have to take the lean years along with the good years.

Q. What would you say would be the rental value of the 20 acres of land that we are speaking about without the barns?

A. It wouldn't decrease the rental value a great deal.

Q. In other words, do I understand it to be your opinion that there was a horse barn that could accommodate 16 horses, with 16 stalls, and with a storage capacity for hay of about 30 tons—do I

(Testimony of Guy J. Pedroni.)

understand that that would not enhance the rental value of that property at all?

A. No, I don't think so.

Q. In other words, barns add no value to the property, at all?

A. Well, it adds some value, yes, but not from the standpoint of production.

Q. Well, I am not talking about production; I am talking about renting. Would it add anything to the rental value?

A. I don't think it would change the rental value a great deal.

Q. On what do you base your figure of from \$10 to \$15 per acre?

A. The production of crops; what the land would be used for.

Q. Are you familiar with the production of crops on this particular 20 acres?

A. Well, fairly so.

Q. Well, what did it produce in the year 1933?

A. I would have to give you an average over probably a period of years.

Q. Well, let's take 1933. Do you know what it produced in 1933? A. No, I do not.

Q. Do you know what it produced in 1934?

A. I do not.

Q. Do you know what it produced in 1935?

A. No.

Q. Do you know what it produced in 1931?

A. I do not.

(Testimony of Guy J. Pedroni.)

Q. Would you say that a rental value of \$20 an acre for this particular land was an exorbitant rent?

A. It is for this [101] particular piece, yes, sir.

Q. On what do you base that statement?

A. The land will not produce it.

Q. Do you know anything about the ability on the remaining ten acres of this land that is not devoted to hay, for grazing purposes?

A. The other ten acres?

Q. Yes.

A. I presume that is used for grazing purposes and more corrals and the like.

Q. Do you know in that particular area what rental would be paid per horse for grazing on that land?

A. You couldn't pay very much unless you imported the feed.

Q. I am not asking if you paid very much. I am asking you do you know how much is paid.

A. No, I do not.

Q. So you do not know what the remaining ten acres would produce in revenue if used as grazing land, do you?

A. As grazing land I would think that a dollar or a dollar and a half an acre would be sufficient rental.

Q. Well, do you know whether grazing land—for instance, isn't it true that people who own land in that vicinity graze horses or mares or horses, at so

(Testimony of Guy J. Pedroni.)

much per day per horse over a period of time, and not so much per acre?

Mr. Mathewson: If your Honor please, I object to this line of examination. The announced purpose of renting that property was for feeding dry stock. The opinion of the witness was asked as to the use of the property for feeding dry stock, not the pasturing of mares.

Mr. O'Connor: I submit that if the property is leased, the person leasing it can use it for anything he wants. The fact that he was going to feed dry stock would not be the determining factor in the rental value. [102]

The Court: What is the fact?

Mr. O'Connor: What is the fact about what?

The Court: What was raised on it?

Mr. O'Connor: I don't know. I think it becomes immaterial what was raised on it. The material fact is what could the land produce. What these particular people wanted to use it for is immaterial. They could use it for anything they wanted for what they leased it.

The Court: For example, basing the value on the return on that acreage for raising mares or horses, for example, the fact is that there weren't any raised.

Mr. O'Connor: There is no evidence here that there wasn't. I don't know if there was or not. It becomes immaterial if there was or not.

(Testimony of Guy J. Pedroni.)

The Court: That is the reason he is objecting, because it is immaterial. That is his objection.

Mr. O'Connor: My point, if your Honor please, is that once I lease a piece of property, you can do anything you want with the property; you can raise anything you want on it.

The Court: No doubt; but here we call an expert for the purpose of ascertaining what is a reasonable rental for property, this property, property in that vicinity; whether or not it is excessive rent. That is the issue here.

Mr. O'Connor: Yes; I am cross-examining on that. And if I can show that that land is capable of producing, for instance, hay; if I can show that it is capable of being used for grazing land; if I can show that the revenue from that land is in excess of what this witness says it is by my cross-examination, it certainly affects his opinion and goes to the weight of his opinion.

The Court: I will allow it. Proceed. Let's get through with this witness. [103]

Mr. O'Connor: Please read my last question.

(The reporter read the last question.)

Mr. O'Connor: Will you answer that question, please, Mr. Pedroni?

A. The pasture land, live stock, of horses in a number as mentioned before the Court here, it appears to me that they must have to import feed, because that land or no land would produce sufficient to feed those animals.

(Testimony of Guy J. Pedroni.)

Mr. O'Connor: I move to strike the answer upon the ground that it is not responsive to the question.

The Court: The answer will stand. Proceed.

Mr. O'Connor: Q. Will you please answer the question that I asked you, Mr. Pedroni: do you know it to be a fact that in that particular section of the country that grazing land is not necessarily leased by acreage, but that horses are grazed on there at some much per horse per day over a period of time?

The Witness: May I have that question again, please?

The Court: Read the question.

(The reporter read the question.)

A. No, I didn't know.

Mr. O'Connor: Q. You don't know that?

A. No.

Q. And you don't know what the rate is for that, do you? A. No.

Q. At whose request did you make the appraisal of this property?

A. The appraisal of this particular piece of property?

Q. Yes. A. At the request of this Court.

Q. At the request of the Court. When did the Court request you to make an appraisal?

A. I wasn't asked by any—

Q. You were asked by whom?

A. I was asked to appear before this Court by Mr. Mathewson.

(Testimony of Guy J. Pedroni.)

Q. Mr. Mathewson, of the United States Attorney's Office? A. Yes.

Q. Whom did you first talk to concerning your appraisal of this pro- [104] perty?

A. No one else.

Q. Just Mr. Mathewson? A. Yes.

Q. You met Mr. Mathewson where? In Salinas?

A. In Salinas.

Mr. O'Connor: That is all.

Mr. Mathewson: That is all.

Mr. O'Connor: Could I ask Mr. Pedroni one question?

Q. Do you know how much this acreage returned in 1934 and 1935, how much was devoted to grazing land?

A. No. I know one portion, that is approximately 10 acres, that is fenced off, where hay has been grown.

Q. Do you know of your own knowledge during that period of time what portion was devoted to raising hay and what portion was devoted to grazing land?

A. I couldn't say specifically for 1934.

Q. You can? A. I cannot.

Q. Say 1935? A. No.

Mr. O'Connor: That is all.

JACOB J. BAUDOUR,

called for the defendant; sworn.

The Clerk: Q. Please state your full name to the Court.

A. Jacob J. Baudour.

Direct Examination

Mr. Mathewson: Q. Mr. Baudour, where do you live?

A. I live twelve miles out of Salinas.

The Court: Speak out louder, just as you would down in Salinas.

A. 12 miles out of Salinas.

Mr. Mathewson: Q. Is that on the River Road?

A. On the River Road, it is.

Q. Do you know where the Frank Dougherty place is? A. Yes.

Q. How far from the Dougherty place do you live? A. Oh, about a mile and a half. [105]

Q. About a mile and a half up the River Road, or down the River Road?

A. Up the River Road.

Q. Is that toward Salinas or away from Salinas?

A. Away from Salinas.

Q. What is your occupation or business?

A. Farmer.

Q. Do you own your own land? A. I do.

Q. Do you farm your own land?

A. Yes, sir.

Q. And do you lease any land which you farm?

A. Yes, I lease quite a bit of land.

(Testimony of Jacob J. Baudour.)

Q. Do you have any land under lease at the present time? A. Yes, I do.

Q. About how much have you?

Mr. O'Connor: That is objected to upon the ground that it is incompetent, irrelevant, and immaterial. A. At the present time——

Mr. O'Connor: Just a minute.

The Court: Lay the foundation. Where is the land? What character of land?

Mr. Mathewson: Q. What character of land do you have under lease?

A. I have sediment land and I have some hay land.

The Court: Q. How many acres do you own altogether?

A. Do I own?

Q. Yes.

A. I own about 30 acres of my own.

Mr. Mathewson: Q. Where is the hay land?

A. The hay land is about three miles from the Dougherty place toward Salinas.

Q. Is that the same type of land? Are you familiar with the type of land in the Dougherty place?

A. Yes, I am.

Q. That is the land immediately around the Dougherty homestead? A. Yes.

Q. How long have you been engaged in the occupation of farming? A. Mostly all my life.

[106]

The Court: Q. Thirty years?

(Testimony of Jacob J. Baudour.)

A. Yes, 50 years. I was born on the farm.

Mr. Mathewson: Q. How much of that time has been spent in farming around Salinas?

A. For the last 15 years I have been on the same place that I am now.

Q. Are you familiar with the rental value of property of the same type as the Dougherty property?

A. Yes.

Q. What, in your opinion, would be the reasonable rental value of 20 acres of the Dougherty property extending from the front of the Dougherty property south along the River Road, together with the barn on the Dougherty property, corral, two small sheds, and the use of water for the purpose of feeding dry stock?

Mr. O'Connor: Just a moment. To which I object upon the ground that is incompetent, irrelevant, and immaterial, and not within the issues of this case.

The Court: Objection overruled. You may answer.

A. Not over \$5 an acre.

Mr. Mathewson: Q. That is the annual rent?

A. Yes.

Q. And that includes the barn?

A. That includes barns and buildings.

Q. And the corral? A. Corrals.

Q. And the use of water? A. Yes.

Mr. Mathewson: That is all.

(Testimony of Jacob J. Baudour.)

Cross Examination

Mr. O'Connor: Q. Do you know Mr. Dougherty?
A. Yes, I do.

Q. How long have you known him?

A. I have known him for 15 or 16 years.

Q. Did you ever have any difficulties with him?

A. Well, not exactly. I farmed some of his land.

Q. Never had any difficulties with him?

A. No, not—one time [107] there he brought up a suit, but there really wasn't any trial; I just went and gave him his money—a little misunderstanding.

Q. Well, isn't it true that you were farming part of his land there on a crop contract, and he had to sue you to recover money?

A. It was a misunderstanding.

Q. Just a moment. Didn't he sue you to recover the money you owed him?

A. He sued and I paid the money without any trial.

Q. You were sued, and he took a judgment against you? He got a judgment in the Justice's Court in Salinas against you?

A. No, he didn't get a judgment. I just gave the money to the Judge and told him to pass it over to him; I didn't want any trouble.

Q. It was after you had been sued?

A. Yes, he started suit.

Q. Have you been friendly with him since then?

A. Been friendly—we have.

(Testimony of Jacob J. Baudour.)

Q. What have been your relationships? How often have you seen him?

A. Oh, I can't say how often I see him. I go by there; sometimes I see him; sometimes I don't.

Q. How often have you rented land from Dougherty? A. Just the one time.

Q. Isn't it true that he refused to rent you land after that?

A. I never rented from him; I never asked him for it.

Q. You never asked?

A. I never asked him for it.

Q. On what do you base your opinion that the rental value of this land is \$5 an acre?

A. Rental of the land?

Q. Yes. A. Not over \$5 an acre.

Q. What do you base your opinion upon?

A. Well, the land isn't worth it.

Q. What do you base your opinion on? What facts?

A. Well, it is for farming, the land, is only worth \$5, because there is no profit in it. [108]

Q. Do you know what hay it produced in the year 1934 or 1935?

A. As an average crop, it is about a ton to the acre.

Q. About a ton to the acre?

A. A ton to the acre.

(Testimony of Jacob J. Baudour.)

Q. It wouldn't be true, then, that an average crop on that ten acres of land would run about 2½ tons an acre?

A. Not on an average.

Q. Well, would you say it never did run to 2½ tons an acre?

A. Oh, yes, some years they get 2½ tons to the acre.

Q. Do you know anything about the remaining ten acres on that particular piece of land?

A. The ten acres—what did you say?

Q. That isn't in hay?

A. That isn't in hay? Well, I don't know if there is ten acres in there that isn't in hay.

Q. Do you know how many acres are in this particular piece?

A. I don't believe there is over five acres.

Q. You don't believe there are five acres in what?

A. On this particular piece.

Q. On the whole place?

A. Well, in the place that there is no hay on, just grazing land.

Q. Are you familiar with the piece of property that we are talking about?

A. Yes, I believe I am.

Q. How large is the entire piece of property?

A. I don't believe it is over ten acres.

Q. You don't believe it is over ten acres?

A. No, sir.

(Testimony of Jacob J. Baudour.)

Q. Supposing the testimony in this case was to the effect that it was 20 acres; would you say that was correct or incorrect?

A. That is not correct.

Q. How do you know it isn't?

A. Because I can tell by my own piece of property.

Q. You can tell what?

A. That there isn't over ten acres.

Q. How many acres of land are there on the Dougherty place?

A. I believe there is around 1400—between 1400 and 1500 acres. [109]

Q. Do you know what particular acreage was leased by Mr. Dougherty to these other people?

A. Well, from what I heard I know it was a piece—

Q. Do you know of your own knowledge?

A. Yes, I think I know.

Q. How many acres were leased by them?

A. He claims—he leased—

Q. Just a moment. I didn't ask you what he claimed; I asked you how many acres were leased by Mr. Dougherty of your own knowledge? Do you know? A. He leased out twenty acres.

Q. Twenty acres. All right. How much is grazing land worth down there in that particular area? How much would you charge on fair grazing land to put in horses to graze? How much would you charge a day for them?

(Testimony of Jacob J. Baudour.)

A. \$2 a month is a good price.

Q. Would you say \$2 a month would be a good price, is that correct, for each horse?

A. Yes.

Q. For each horse? A. Yes.

Q. How many horses could you graze on ten acres of fair grazing land?

A. By the year? For the year? Not more than one horse.

Q. One horse for ten acres?

A. On that kind of soil.

Q. Just one horse to ten acres?

A. Just one horse to ten acres on that kind of soil.

Mr. O'Connor: That is all.

HERBERT BALTZ,

called for the defendant; sworn.

The Clerk: Please state your full name to the Court.

A. Herbert Baltz.

Direct Examination

Mr. Mathewson: Q. Where do you reside, Mr. Baltz? A. Salinas, California. [110]

Q. What is your occupation?

A. Realtor.

Q. Where do you conduct your business?

(Testimony of Herbert Baltz.)

A. In Salinas and vicinity.

Q. How long have you been engaged in that business? A. 14 years.

Q. What business did you engage in before you engaged as a real estate broker?

A. I was a bookkeeper and field man for N. Wellman Company, wholesale hay, grain and produce.

Q. Are you familiar with the Frank A. Dougherty place located about twelve miles southwest from Salinas on the River Road?

A. Yes, sir.

Q. Are you familiar with the land in front of the buildings on the Dougherty place and the land extending down the River Road toward Chular?

A. Yes, sir.

Q. Are you familiar with similar land in the community? A. Yes, sir.

Q. Are you familiar with the rental values of that land? A. Yes, sir.

Q. Are you able to form an opinion as to the reasonable rental value of approximately 20 acres of the Dougherty place located in front of the Dougherty building? A. Yes, sir.

Q. Extending down the road, together with a barn, corral, two sheds, and the use of water for the purpose of feeding dry stock?

A. Yes.

(Testimony of Herbert Baltz.)

Q. What is your opinion of the reasonable rental value?

Mr. O'Connor: Just a moment. To which I object upon the ground that it is incompetent, irrelevant, and immaterial, not within the issues of this case.

The Court: Objection overruled. You may answer.

Mr. Mathewson: Q. What is your opinion?

A. \$170 per year.

Mr. Mathewson: That is all.

Cross Examination

Mr. O'Connor: Q. Upon what do you base that opinion, Mr. Baltz?

A. On a calculation of figures derived from income of hay land, grazing land, and buildings.

[111]

Q. What figures do you refer to, specifically?

A. What do you mean?

Q. What figures are you referring to? You said that you based that upon a calculation of figures. I am asking you what particular figures you are referring to.

A. I refer to 15 acres of hay land capable of producing on the average 1 ton of hay per acre on which the owner would receive the usual crop share of one quarter per ton, based on the average price \$16 per ton delivered and put in the barn,

(Testimony of Herbert Baltz.)

which would produce \$4 per year per acre. That multiplied by 15 acres, which is the approximate hay land produces \$60.

Q. Now, then, on what do you base your statement there was approximately fifteen acres of hay land involved here?

A. From my observation I assume, or I have determined that the segregation of the land is fifteen acres hay land and five acres grazing land.

Q. When did you make that determination?

A. Yes, sir.

Q. Did you go onto the property yesterday?

A. Yes, sir.

Q. Do you know what portion of that property was used for hay in 1934 and 1935?

A. I was on the ground at that time.

Q. In 1934 and 1935?

A. Yes, sir, in '34.

Q. In '34.

A. At the time the place was demolished.

Q. The place was—— A. At the time——

Q. The still?

A. The trouble, the still demolished.

Q. You were out there? A. Yes, sir.

Q. What were you doing out there?

A. I went out there at the time they auctioned off the materials.

Q. At the time they auctioned some of the materials seized from the still? A. Yes, sir.

(Testimony of Herbert Baltz.)

Q. In basing your figures, you are assuming, I assume, when you give that rental of \$170 a year—I will withdraw that question. What is the usual crop share that goes to the owner of property in land [112] of this type?

A. One-quarter share.

Q. One-quarter share. In basing your figure of rental at \$170 a year, I assume that you are assuming that the owner would receive one-quarter share, is that correct? A. Yes.

Q. Do you know whether or not he was to receive it in this particular case?

A. No, I don't know that.

Q. Supposing that he didn't receive it, what would be your idea of a fair value of the rental of that land? A. Not over \$200.

Q. Isn't it a fact that the rent down there is not a quarter share to the owner, but a third share to the owner?

A. In more cases it is one-quarter in grazing land.

Q. We are talking about hay land.

A. In hay land, yes, because the owner has a chance to sell the stubble, which is another little profit—or the tenant, I should say.

Q. Now, then, as I understand your testimony, if the owner did not receive a share of the crop a fair rental would be \$200 for how many acres?

A. For twenty acres.

(Testimony of Herbert Baltz.)

Q. And how many acres of that would you assume to be in hay? A. 15 acres.

Q. All right. What would be the value of the return that a man would receive from five acres of grazing land?

A. For cows or horses?

Q. For horses. A. \$2 an acre per year.

Q. \$2 an acre per year? A. Yes.

Q. Supposing that he was renting not on an acreage basis, but on the basis of so much a head per horse, what would you say would be a fair return that he should get?

A. For just the use of the land, I would still say \$2 per acre.

Q. I say, assuming that he is not renting it upon that basis, but is charging per day per horse, what would you say would be a fair charge per day per horse?

A. I couldn't answer that; that is in the [113] category of a riding academy.

Q. You don't know, do you?

A. I don't know, no, sir.

Q. By the way, whom did you first discuss the question of your becoming a witness in this case with?

A. I don't know the gentleman's name.

Q. Mr. Gaines, who sits here? A. Yes.

Q. When did you talk to Mr. *Gains* first?

A. About a month ago.

(Testimony of Herbert Baltz.)

Q. What would you assume would be the production of hay on that acreage per year in tonnage?

A. Well, the other day when I passed it, there is about a ton of hay in the cob there now. As I remember '34, it was a hay year, and it should have been about two tons an acre.

Q. Two tons of hay per acre? A. Yes.

Q. Two tons of hay per acre would be how many tons? A. 30 tons of hay.

Q. How much was hay selling for in that year?

A. \$16 per ton, delivered and put in the barn.

Q. \$16 a ton, so that hay land would produce a return of \$480, is that correct? A. Yes.

Q. During the year 1934?

A. 16 multiplied by 30.

Q. Now, then, do you know whether or not, or would you say that the payment of a dollar a day for ten horses as grazing land would be a fair return or would be a fair price?

A. A dollar a day?

Q. For ten horses, ten mares.

A. Strictly for grazing, without any care?

Q. Grazing, water—water and grazing land.

A. \$10 a day for ten horses?

Q. No; \$1 a day for ten horses.

A. It would be a fair wage, yes.

Q. It would be a fair return? A. Yes.

Q. You wouldn't say it was excessive, would you? A. No.

Mr. O'Connor: That is all. [114]

(Testimony of Herbert Baltz.)

Redirect Examination

Mr. Mathewson: Q. Mr. Baltz, how long could you pasture ten horses on the property in the front of the Dougherty place?

A. Are you referring to the five acres?

Q. Yes. A. Or the 20 acres? -

Q. 5 acres. A. About a week.

Mr. Mathewson: That is all.

JULIUS BIANCHINI,

called for the defendant; sworn.

The Clerk: Q. Please state your full name to the Court?

A. Julius Bianchini.

Direct Examination

Mr. Mathewson: Q. Mr. Bianchini, where do you now live? A. El Cerrito.

Q. What address in El Cerrito?

A. 351 San Pablo Avenue.

Q. You were one of the defendants in the trial for the operation of the distillery on the Frank Dougherty place? A. Yes, ma'am.

Q. That distillery was seized when, do you recollect? A. The day?

Q. About the time the distillery was seized.

A. Oh, it is 1934 in November—part of November, sometime.

(Testimony of Julius Bianchini.)

Q. Is that when the distillery was seized?

A. That is the time we put up the still.

Q. You put the still sometime in November, 1934?

A. That's it.

Q. Do you recollect when you first went upon the Dougherty property?

A. Yes.

Q. When did you first go out there?

A. I don't remember exactly; in October—the last of October and the first of November; something like that.

Q. 1934?

A. 1934. [115]

Q. With whom did you go?

A. Mr. Rodoni and Biagi.

Q. About what time of the day did you go out there?

A. I have forgotten; I think it was the forenoon.

Q. When you went out there did you see Mr. Dougherty?

A. Mr. Rodoni introduced me to Mr. Dougherty.

Q. Where was Mr. Dougherty?

A. Right in the yard.

Q. In the front yard?

A. Yes.

Q. At that time did you have any conversation or did any one of the three of you have any conversation with Mr. Dougherty with respect to renting his property?

A. Yes, we had conversation to rent the place for the still.

Q. Did you tell him at the time that you wanted to rent the place for a still?

(Testimony of Julius Bianchini.)

A. We tell Mr. Dougherty we want to rent the place for the still and then we make arrangement to have a place for the still.

Q. Did you discuss the property that you wanted to rent? A. We decided just the barn.

Q. You told him you wanted the barn?

A. The barn, and to go through for the gate to the barn.

Q. How did you determine how large that property was?

A. Oh, it is hard to say; I don't know; about 10 acres, 5 acres; I don't know.

Q. You were interested in the barn?

A. Just in the barn.

Q. Did you discuss with Mr. Dougherty the rental that you would pay for the place?

A. \$125 a month.

Q. Did you prepare a written lease?

A. We prepared a written lease the same time we go in there.

Q. Who prepared the lease?

A. Me and Biagi.

Q. Where did you prepare it?

A. In San Juan.

Q. After you prepared the lease did you present it to Mr. Dougherty?

A. Give to Mr. Dougherty. [116]

Q. And did Mr. Dougherty sign it?

A. I didn't see him at the time he signed it. Mr. Dougherty get the lease and maybe he make—

(Testimony of Julius Bianchini.)

he read to somebody to see if it is all right, and I don't sign it. And Mr. Rodoni signed the lease. We told Mr. Rodoni to sign.

Q. You told Mr. Rodoni to sign it?

A. Yes.

Q. You gave it to Dougherty and you didn't see him sign it?

A. No, I don't see Mr. Dougherty sign it.

Q. Do you remember for how long a period of time you wanted this property?

Mr. O'Connor: Just a moment. I object to that upon the ground that it is incompetent, irrelevant, and immaterial what period of time he wanted it for, not binding upon the plaintiff in this case.

The Court: You may develop whatever was said and done at that time and place. Develop the conversation whatever it was.

Mr. Mathewson: Q. Did you have any further conversation with Mr. Dougherty with respect to the use of his property?

A. We had conversation that day and then we came back again and make arrangements.

Q. Did you make any arrangements or have any conversation with Mr. Dougherty for the use of any houses on the property where men could stay?

A. We had conversation to have the little cabin on the side of Frank Dougherty's house.

Q. He told you could have that place for men to stay?

A. Yes, sir.

(Testimony of Julius Bianchini.)

Q. After you leased the property what did you do?
A. After we leased the property?

Q. Yes.

A. We started work to put up a still there.

Q. Did you move a still into the place?

A. Yes, sir.

Q. About how long did it take you to set it up, do you remember?

A. Oh, to make—to set up and start to run, I think around 30 days.

Q. During that period of time did you go on the property?
A. Yes, [117] sometimes

Q. About how often did you go on the property?

A. Oh, time before run I go every day to work, every night, you know, to set up.

Q. How long did the still operate?

A. First time operate about 21 days or 22; I don't remember exactly.

Q. And how long was it before it started to operate again?
A. Over four months.

Q. Over four months. The second time it operated how long did it operate?

A. Altogether got thirteen days.

Q. Do you remember how much alcohol you produced there per day?

A. Oh, between 50 and 55 cans.

Q. 5-gallon cans?
A. Yes.

Q. Did you make any application for power on the place?

A. Yes, I make application two times.

(Testimony of Julius Bianchini.)

Q. I show you Defendant's Exhibit B in evidence and refer particularly to application No. 35-101 dated April 30, 1935, and application No. 34-283, dated November 5, 1934, and ask you to examine those and tell me whether or not that is your signature on the application. A. I can't read.

Q. You can't read? A. No.

Q. Can't you write your name?

A. Yes, I can write my name; I can read it.

Q. Will you look at that and tell me whether that is your name?

A. What do you mean, what is the name?

Q. I am calling your attention now to this pencil name, "R. Bini" and ask you if you signed that.

A. I signed that.

Q. Did you sign the name "R. Bini" on Application No. 34-283? A. Yes, I signed again.

Q. You signed both of those applications?

A. Yes.

Q. Who paid Mr. Dougherty the rent?

A. I paid. [118]

Q. Did you pay him, yourself? A. Yes.

Q. How often did you pay him?

A. I paid two months first time and one month the last time. We got three months.

Q. You paid him a total of three months?

A. No, I paid \$125 at a time.

Q. You paid him \$125 each time?

A. Each time.

Q. You paid him three times?

(Testimony of Julius Bianchini.)

A. Three times.

Q. Twice in 1934? A. Yes.

Q. And once when you started up again?

A. That's it.

Q. Did you ever see Mr. Dougherty around his place while you were there?

A. I seen him around the yard, yes.

Q. And do you recollect what time of the day you saw him?

A. Oh, most was there noon time.

Q. Usually around noon time? A. Yes.

Q. Do you remember whether Mr. Dougherty was ever around his place at noon time when the still was operating?

A. Yes, he was around—not around the still; he was in the yard over the house.

Q. Did Mr. Dougherty ever come around the still at all?

A. Not at the time I was there.

Mr. Mathewson: That is all.

Cross Examination

Mr. O'Connor: Q. Just a moment, please.

A. All right.

Q. You have been convicted of a felony, haven't you?

The Court: You will have to iron that out a little, "felony" he probably doesn't understand.

(Testimony of Julius Bianchini.)

Mr. O'Connor: Q. Do you know what a felony is? Do you know what a felony is? A. No.

Q. Are you a citizen? You pleaded guilty here in this court to violating the Internal Revenue Laws with respect to stills, didn't you?

A. Yes, sir; I served my time for that.

Q. You pleaded guilty to it, didn't you? [119]

The Court: He asked you if you pleaded guilty.

A. Yes, I plead guilty.

Mr. O'Connor: Will it be stipulated that the witness has been convicted of a felony, Mr. Mathewson?

Mr. Mathewson: Yes.

Mr. O'Connor: Q. And you testified as a witness for the Government at the time Mr. Dougherty was tried in the criminal case, didn't you?

The Court: Did you testify? I don't recall. Did he?

Mr. O'Connor: Yes, he testified.

Mr. Mathewson: He testified in the criminal case.

A. I think I make a mistake that time.

Mr. O'Connor: Q. You made a mistake that time. What was the mistake you made that time?

A. I make mistake; I don't say the truth.

Q. You didn't tell the truth. In what way didn't you tell the truth that time?

A. Well, because I don't want to plead guilty my case.

Q. What?

(Testimony of Julius Bianchini.)

A. I don't want to plead guilty in my case.

Q. You already had pleaded guilty before you testified, didn't you? A. No.

Mr. Mathewson: No.

Mr. O'Connor: Q. All right, Mr. Bianchini, didn't you on the 15th day of January, 1936, plead guilty in this court before Judge Roche?

Mr. Mathewson: The question has been already asked and answered. A. Yes.

Mr. Mathewson: The witness has said that he did plead guilty.

Mr. O'Connor: That isn't the question. He said he hadn't pleaded guilty until after the case was tried.

The Court: I think there was some confusion. Whatever the record discloses, develop if that was the fact.

Mr. O'Connor: Q. Did you plead guilty on January 15, 1936, before [120] his Honor, Judge Roche?

A. I don't remember the date, exactly. I plead guilty my case.

Q. You pleaded guilty before the other case went to trial and then you came here and testified before the jury, didn't you?

A. No, I don't remember that.

Q. You didn't testify?

The Court: Before a jury, a jury sitting here, you testified?

(Testimony of Julius Bianchini.)

A. I testified that; I don't know my case was already gone.

Mr. O'Connor: Q. You had pleaded guilty already but you hadn't been sentenced yet, isn't that correct? You had pleaded guilty but the Court had not sentenced you, isn't that correct?

A. That is correct.

Mr. Mathewson: That is stipulated.

Mr. O'Connor: Q. Do I understand you to say now that you did not tell the truth at the last trial?

A. No.

Q. Why? A. Because I make a mistake.

Q. What was the mistake you made?

The Court: Q. What was the mistake you made?

A. The mistake. All right, that time I testified I think the lease is Frank Dougherty, the lease he have, but the lease I see he don't say Frank. Now, I got to say the truth.

Q. In other words, at that time you said the lease said Frank Dougherty?

A. That is what I said.

Q. But the lease didn't say Frank Dougherty?

A. No.

Mr. Mathewson: I think counsel has misunderstood the witness. I think the witness said that he thought the lease would save Frank Dougherty.

The Court: Q. Did you say "save"?

A. Yes.

Mr. Mathewson: And it didn't save him.

Mr. O'Connor: Well, it did save him. [121]

(Testimony of Julius Bianchini.)

Mr. Mathewson: Well, I think it was the efforts of counsel rather than the lease.

The Court: I have no doubt about it, myself.

Mr. O'Connor: Q. Well, at the last trial of this case, Mr. Bianchini, in any event, didn't you testify that when you, Rodoni and Biagi went to see Mr. Dougherty about this place you told him you wanted to run cattle? Didn't you testify to that at the last trial?

A. Yes, I testified to that.

Q. You testified to that on the last trial?

A. Yes.

Q. And didn't you testify on the last trial that you did not tell Dougherty you were going to make liquor there?

A. We talked to Dougherty we going to put up a still.

Q. Wait a minute; I am not asking you that. When you testified before his Honor, Judge Roche, at the last trial, didn't you tell his Honor and the jury that when you talked to Dougherty you did not tell Dougherty you were going to run a still there; isn't that true? A. Yes.

Q. That is true? A. That is true.

Q. Now, you want the Court to understand that at the time you talked to him you did tell him you were going to run a still; is that correct?

A. Well, because that time I make mistake.

Q. You made a mistake then but you are not making any mistake this time? A. That's it.

(Testimony of Julius Bianchini.)

Q. Who have you talked to before you became a witness in this case here about this case?

The Court: He wants to know whom you talked to.

A. He wants to know? Mr. Mathewson, there.

Mr. O'Connor: Q. Mr. Mathewson; whom else?

A. The other fellow.

Q. You mean Mr. Gaines? A. Yes. [122]

Q. When did you talk to Mr. Gaines first about this case?

A. Just a minute. No, it wasn't for this case; it was another case.

Q. Do you remember that?

A. Yes, he came over and saw me once. I got mixed up.

Q. You gave him the story?

A. This fellow came over to see me twice.

Q. He came over to see you twice? A. Yes.

Q. He talked to you about the Dougherty case?

A. Yes.

Q. When did he talk to you about the Dougherty case? A. Last week sometime.

Q. Tell us the conversation you had with him?

A. I don't know it is right to tell them to you or not.

Mr. Mathewson: I think you had better unless the Court tells you not to.

The Court: Tell him all about it.

A. Well, he had a conversation, he wanted to find out the truth.

(Testimony of Julius Bianchini.)

Mr. O'Connor: Q. The truth. What did you tell him? Did you tell him you didn't tell the truth the last time, or did he tell you you didn't tell the truth the last time?

A. No, you know what I tell you. I tell him everything what I told last time, and this morning I decided to tell the truth.

Q. To tell the truth? A. Yes.

Q. In other words, when Mr. Gaines talked to you you told him the same thing you told him the last time? A. Yes.

Q. This morning you thought you would tell the truth. Before you determined to tell the truth this morning whom else did you talk to?

A. Nobody else.

Q. Did you talk to Rodoni?

A. I see Rodoni, yes.

Q. Did you talk to Rodoni?

A. I don't talk about the case.

Q. You didn't talk about the case at all?

A. No. [123]

Q. Weren't you talking to him about the case in the lavatory outside? A. No.

Q. You were talking in there?

A. I was talking, not about the case.

Q. Mr. Gaines was in there with you, wasn't he, isn't that true?

A. I don't talk about the case.

Q. Mr. Gaines, Mr. Rodoni, and you were in the lavatory together?

(Testimony of Julius Bianchini.)

A. I don't was in the lavatory myself; you are mistaken.

Q. You weren't? In any event, you didn't tell the truth last time and you are telling the truth now; is that correct? A. Correct.

Q. Now, then, didn't you testify at the last trial of this case that you only paid Dougherty on the one occasion? A. I paid Dougherty.

Q. I didn't ask you what you paid him; I am asking you what you testified to at the last trial. Didn't you at the last trial testify that you only paid him once, and that you paid him \$115?

The Court: He wants to know if you testified—

A. I don't remember that.

Q. Would you say that you did or you did not?

Mr. Licking: If the Court please, I would suggest that counsel show him the transcript.

Mr. O'Connor: I haven't got the transcript. If necessary, I will ask the Court to continue the case until I can get it.

Q. Did you testify at the last trial that you paid Dougherty \$125 on three different occasions?

A. I don't remember.

Q. Would you say that you did or you did not?

A. I say I don't remember; a long time.

Mr. O'Connor: That is all.

Redirect Examination

Mr. Mathewson: May I ask one question?

The Court: Yes. [124]

(Testimony of Julius Bianchini.)

Mr. Mathewson: Q. Mr. Bianchini, you talked to me twice before you came over here, did you not?

A. Yes.

Q. Each time that you talked to me you told me, did you not, that you never talked to Dougherty about setting up the still? A. Yes.

Q. You also told me that you agreed to rent the place for \$400? A. Yes.

Q. The rental was \$20 a month? A. Yes.

Mr. O'Connor: Let him testify as to what he told you. It is redirect examination; it isn't cross examination.

Mr. Mathewson: Q. When did you first tell me, Mr. Bianchini, that you told Dougherty that you were going to set up a still there?

A. The first I told you?

Q. Yes.

A. We rent that place for dry stock, you remember?

Q. Well, when did you first tell me that?

The Court: Q. When did you first tell Mr. Mathewson?

A. A little over a week, I think. I don't remember the night you come over to——

Mr. Mathewson: Q. No, no.

Mr. O'Connor: Let him answer the question.

Mr. Mathewson: Q. When did you first tell me that you told Dougherty when you rented the place that you were going to set up a still?

A. The night you came over there, over where I live.

(Testimony of Julius Bianchini.)

Q. Do you understand me, Mr. Bianchini? When did you first tell me—when did you first tell me that you told Dougherty you wanted the place for a still?

A. Oh, the first time I told you, this morning, over here.

Q. This morning, where?

A. This morning right in the corner, there.

Q. When did you first tell me that you agreed to pay Dougherty the rent of \$125 a month?

A. This morning.

Mr. Mathewson: That is all. [125]

Mr. O'Connor: May I see that assessment? I would like to ask some further questions.

Recross Examination

Mr. O'Connor: Q. Where are you living now?

A. In El Cerrito.

Q. The Collector of Internal Revenue made an assessment of tax against you arising out of the operation of this still, didn't he?

A. Investigation, yes.

Q. He made an assessment against you; you were notified that you owed the Government over \$7000 in taxes, weren't you?

A. When I get it, I pay.

Q. As a matter of fact, you were notified by the Collector of Internal Revenue that they had assessed over \$7000 in taxes against you; isn't that true?

A. I guess so. I don't know exactly how much.

(Testimony of Julius Bianchini.)

Q. You know that you are supposed to owe the Government over \$7000 in taxes for operating this still down there on the Dougherty ranch, don't you know that? A. (No answer).

Q. Isn't that true? A. I don't know.

Q. You don't know. Haven't you ever received a notice from the Collector of Internal Revenue that he held a tax bill against you for over \$7000 because of the operation of this still? Didn't you receive a notice from the Collector of Internal Revenue?

A. I received a notice; I don't remember how much.

Q. You also know that your other co-defendants in the case, Rodoni, Guiseppi Guinto, Guiseppi Biago and George Harrison, also were assessed the same amount of tax, don't you, the same tax that they are trying to collect from Dougherty? You know that? Don't you know that? A. Yes.

Q. Do you know that if Mr. Dougherty pays any part of that tax that makes less tax for you to pay, don't you? A. No, I don't know that. [126]

Q. You don't know that? A. No.

Q. You didn't know that Mr. Dougherty had already paid over \$3700 of that tax and that would come off your tax bill, did you?

Q. If I told you it were true, would that make any difference in your testimony? A. No.

Mr. O'Connor: No, it would not. All right, that is all.

GUISEPPI BIAGI,

called for the defendant; sworn.

The Clerk: Please state your full name to the Court. A. Guiseppi Biagi.

Direct Examination

Mr. Mathewson: Q. Mr. Biagi, where do you live? A. San Mateo.

Q. Where in San Mateo?

A. 209 26th Avenue.

Q. You pleaded guilty to a charge of operating a still in the Frank Dougherty place, did you not?

A. Yes, sir.

Q. Do you recollect when you first went on the Dougherty place? Do you remember when you went the first time on the Dougherty place?

A. Yes, I think it was on Monday.

Q. Do you remember what year it was?

A. 1934.

Q. About what time of the year?

A. Between October—last part of October, I think; I don't remember the date, because that is too far back.

Q. Did you see Frank Dougherty on the place where you went there? A. Yes, sir.

Q. Will you relate to the Court—will you tell the Court what happened when you went there?

A. We went there, and Rodoni introduced me, because I never known him, and we had a conversation to do what we done.

Q. What did you say to Dougherty and what did Dougherty say to you? [127]

(Testimony of Guiseppi Biagi.)

A. We started, before we talking, we say we going to put dry stock. I ask if we have to say the truth, you can't go any place, say anything like that.

Mr. O'Connor: May I have that answer?

A. And on top was the truth, what you going to do?

Mr. O'Connor: Just a minute.

(The reporter read the answer of the witness.)

Mr. O'Connor: I move—let it stay.

Mr. Mathewson: Q. Did you tell Mr. Dougherty what you wanted that place for?

A. Yes, sir.

The Court: Speak up. A. Yes, sir.

Mr. Mathewson: Q. What did you tell him you wanted the place for? A. For the still.

The Court: Q. For what?

A. For the still.

Mr. Mathewson: Q. How much did you agree to pay him for the place?

A. I think I said the other time in front the jury trial—

Mr. O'Connor: Just a moment. I object to that, if your Honor please, upon the ground that it is not responsive to the question.

The Court: Read the question.

(The reporter read the question.)

A. I said like I want to say, see. I think I remember I told you in the front the truth at the time.

(Testimony of Guiseppi Biagi.)

Mr. O'Connor: I object to that on the ground that it is not responsive.

The Court: You answer that question then explain it any way you want. Tell the conversation.

A. 125 a month.

Mr. Mathewson: Q. Did you ever pay him any rent? A. Not me. [128]

Q. Did you have any conversation about the preparation of a lease?

A. No, I think I never had any myself.

Q. You never had any conversation about the preparation of a lease? A. No.

Q. Did you tell Mr. Dougherty how much land you wanted?

A. Oh, we say we want to—we was interested in the barn, the front of the barn, because after we say we make the lease. He says I can put a little big, put about 20 acres.

Q. Did you have any conversation with Mr. Dougherty about using any cabin on the place for living quarters?

A. The pump; nothing else.

Q. Water. Did you ask him whether you could have any place to stay there?

A. Not me. Maybe Bianchini asked him. He was the one that did most of the outside work.

Q. After you had the lease did you set up a still?

A. Yes, sir, started right in few days before we was working.

(Testimony of Guiseppi Biagi.)

Q. How long did it take you to set up the still?

A. It take between 25 and 30 days before we got started.

Q. How much of that time did you work on it?

A. I worked every day.

Q. You worked every day?

A. Every day.

Q. When would you come to work?

A. Early in the morning.

Q. Early in the morning?

A. Go out late at night.

Q. How long did the still operate after you got it up?

A. I don't remember sure how many days it operate first time, about 22, 21; I don't remember exactly.

Q. Why did the still shut down the first time, do you know?

A. Because the stuff was too cheap; we can't make any profit.

Q. By "the stuff" do you mean alcohol?

A. Alcohol, yes, it was too cheap; we can't make any profit.

Q. Did you have any trouble with your equipment?

A. Yes; we had a trouble on the boiler, too. [129]

Q. What happened to the boiler?

A. It burned out.

Q. What did you do with it?

(Testimony of Guiseppi Biagi.)

A. I leave man there to take them outside and replace another one. I was outside looking for the other one, myself.

Q. When you shut down the still what did you do with the equipment?

Mr. O'Connor: That is objected to upon the ground that it is incompetent, irrelevant, and immaterial.

A. Take them away.

Mr. O'Connor: Wait a moment, please, Mr. Bianchini—whatever your name is. Object to that on the ground that it is incompetent, irrelevant, and immaterial.

The Court: What was the question?

(The reporter read the question.)

Mr. Mathewson: You see, your Honor, they started the still—

Mr. O'Connor: I withdraw the objection. You are referring to the time when it was shut down?

Mr. Mathewson: Yes.

Mr. O'Connor: I withdraw the objection.

The Court: Answer the question.

A. We moved the still away. We just leave boiler and the empty tank inside the barn and the pot from the still.

Q. Did you come back later and set up the still again? A. Yes.

Q. About how much later?

A. Oh, about three months, or something like

(Testimony of Guiseppi Biagi.)

that; I don't remember; three and a half or four months.

Q. The second time you set up the still how long did you operate? A. Thirteen days.

Q. How much alcohol did you produce in thirteen days?

A. We produced between 50 and 55 cans a day.

Q. Were you around the place while it was operating the second time? A. Oh, sure.

Q. How often were you around there?

A. I usually around every morning. [130]

Q. Every— A. Every morning.

Q. Every morning? A. Yes, sir.

Q. What time did you go in there in the morning?

A. I used to get the stuff and take them out.

Q. Do you remember about what time in the morning it was?

A. Oh, it was all the time before daylight.

Q. It was before daylight? A. Yes.

Q. You would go in in the morning and take the stuff out before daylight? A. Yes.

Q. Did you ever see Mr. Dougherty around the place while the still was operating?

A. Not around the barn.

Q. Not around the barn?

A. I saw him in the yard.

Q. You saw him in his yard? A. Yes.

Mr. Mathewson: That is all.

(Testimony of Guiseppi Biagi.)

Mr. O'Connor: May we take a short recess at this time, if your Honor please?

(After recess:)

Cross Examination

Mr. O'Connor: Q. Where do you live now, Mr. Biagi? A. San Mateo.

Q. Whereabouts in San Mateo?

A. 209 26th Avenue.

Q. How long have you lived there?

A. About 15 months.

Q. Have you ever been convicted of a felony?

A. What?

Q. Have you ever been convicted of a felony?

Do you know what a felony is?

Mr. Mathewson: We will stipulate that he was convicted of a felony in this Dougherty case.

Mr. O'Connor: Q. You pleaded guilty?

Mr. Mathewson: He has so testified.

Mr. O'Connor: This is cross examination. I have a right to [131] cross examine the witness.

Q. You pleaded guilty in the case of United States v. Dougherty and others when you were charged with the operation of a still, didn't you?

A. Yes.

Q. You received a jail sentence, didn't you?

A. Yes.

Q. What was your sentence?

A. Same thing; one year.

(Testimony of Guiseppi Biagi.)

Q. Prior to that time you had been convicted of a violation of the liquor laws before that, hadn't you?

Mr. Licking: To which I object on the ground it is immaterial unless that violation was also a felony.

Mr. O'Connor: I propose to show that it was.

Q. You were convicted of a violation of the California State Sale Law? A. Yes.

Q. And you did time in the Hollister County Jail for it? A. Yes.

Mr. Licking: I move that that testimony be stricken on counsel's own statement, because under the laws of the State of California no offense is a felony when the sentence is to the county jail.

Mr. O'Connor: I will take a ruling.

The Court: Objection sustained.

Mr. O'Connor: Q. Were you ever convicted of any other violation of the liquor laws other than the violation when you pleaded guilty in this case?

Mr. Licking: To which I object on the ground that it is immaterial unless it is confined to a felony.

The Court: Objection sustained.

Mr. O'Connor: Q. Were you ever convicted of any felony other than the felony in this particular case? A. Yes, another in 1931.

The Court: What was that? A. 1930.

Q. What happened?

A. I got sent to some jail—county jail. [132]

Mr. O'Connor: Q. Where? What court?

(Testimony of Guiseppi Biagi.)

A. In Judge St. Sure.

Q. For violation of the Internal Revenue Laws with respect to sale, wasn't it? A. Yes.

Mr. O'Connor: That was a felony.

Q. Now, then, whom have you talked to about your testimony in this case? A. What?

Q. Whom have you talked to about your testimony in this case?

The Court: Whom have you talked to?

A. Mr. Mathewson.

Mr. O'Connor: Q. Whom else?

A. Mr. Gaines.

Q. They came down to your house in San Mateo, didn't they? A. Yes.

Q. When they talked to you down there did you tell them at that time that when you had the conversation with Dougherty about leasing the place that you told Dougherty you were going to operate a still there? A. I told him at that time, yes.

Q. How long ago was that?

A. Friday night.

Q. And at that time what did you tell them?

A. What?

Q. What did you tell them?

A. I told him we pay \$125 a month for rent.

Q. Well, what did you tell them about a conversation you had with Dougherty the first time you talked to Dougherty?

A. I say I never talked much with Dougherty. I told him the same thing I told here.

(Testimony of Guiseppi Biagi.)

Q. That you never talked to Dougherty?

A. Most of the talking Bianchini and Rodoni.

Q. Were you present?

A. Yes, I was present.

Q. What conversation did you tell them was had between Dougherty, Rodoni and Bianchini on the first time you talked to Dougherty concerning the lease of these premises?

A. I don't remember my conversation. I told them I don't remember what conversation we had.

Q. You told them you didn't remember?

A. Yes.

Q. Did you tell them you told Dougherty that you were going to use the barn to operate a still in?

A. No, I told them I don't [133] remember.

Q. Do I understand you to here testify today, your present testimony to be, that when you talked to Dougherty you told Dougherty you were going to operate a still there?

A. The other guys told him, yes.

Q. Did you hear him tell him?

A. No, I don't think so.

Q. You didn't hear anyone tell Dougherty that a still was going to be operated there?

A. I don't remember exactly; it is too far back.

Q. At the last trial you testified that you did not tell Dougherty you were going to operate a still, but that you told him you were going to raise chickens and run cattle; didn't you testify to that on the last trial? A. I don't remember.

(Testimony of Guiseppi Biagi.)

Q. Would you say that you did not?

A. I say I don't remember.

Q. You don't remember whether you did, or not?

A. Whether I did, or not.

Q. Now, do I understand it to be your testimony now that you did not tell Dougherty that you were going to run a still there?

A. What do you mean?

Q. Do I understand you to now testify today that when you talked to Dougherty about renting these premises that you did not mention a still to him?

Mr. Licking: I submit, your Honor, that the question, while perfectly phrased for another witness, is obviously to this witness unintelligible.

The Court: Q. Did you hear this conversation?

A. I think I heard the conversation; I know was one talking out there.

Q. What do you remember was said?

A. I remember somebody say for that.

Q. Somebody said what?

A. For the operation of the still.

Q. When? A. When we went to see.

The Court: Proceed.

Mr. O'Connor: Q. Told that to whom?

A. To Dougherty. [134]

Q. When was that?

A. The first time we went to see or the second.

Q. Who said that? A. What?

Q. Who said that to Dougherty?

(Testimony of Guiseppi Biagi.)

A. Bianchini or Rodoni, one of the two.

Q. You are sure of that?

A. I am pretty sure.

Q. Now, didn't you testify at the last trial that they didn't tell him that?

A. I don't remember that I testified to that or not.

Q. You did testify at the last trial, didn't you?

A. Yes, I testified at the last trial.

Q. Do you remember testifying at the last trial that you told Dougherty that you wanted the place to raise chickens on and run cattle? Do you remember testifying to that?

A. Yes, we told him that, too.

Q. Do you remember testifying at the last trial that you never mentioned the still to him?

A. I don't know if I said that or not.

Q. You don't know whether you said that, or not. Now, there has been assessed against you a tax.

A. I know that.

Q. How much is the tax assessed against you?

A. Seven thousand something; I don't know.

Q. Has any of your property been seized?

A. I haven't got any property.

Q. Did you consult a lawyer concerning it?

The Court: Q. Did you talk to a lawyer?

A. No, I never talked to anyone. Investigators came over to see me about it, six or seven months ago, about it.

(Testimony of Guiseppi Biagi.)

Mr. O'Connor: Q. You know, do you not, that the same amount of tax that is assessed against you has also been assessed against the other defendants, don't you? A. Yes.

Q. You know that? A. I know that.

Q. And you know that if the Government collects any part of the tax [135] from anybody it takes the amount off your tax?

A. I don't know that.

Q. You don't know that? Don't you know that the tax is assessed jointly against all of you?

A. Yes, I think it be the same one every boy; I don't know if you collect one take if off from the other.

Q. You don't know that?

A. I don't know that.

Q. Supposing I told you that that was the fact; that if the Government successfully collected any tax from Dougherty that they would cut down your tax; would that make any difference in your testimony?

Mr. Licking: It seems to me that question is immaterial, because it presupposes something which the witness knew before he testified about something which is assumed to be a fact by counsel now.

The Court: The only purpose of this testimony, I take it, is to show the interest of this witness.

Mr. O'Connor: That is correct.

The Court: I will permit the answer. The reason for his testimony he has given.

(Testimony of Guiseppi Biagi.)

(The reporter read the last question.)

The Court: Would that make any difference in your testimony—what you are saying here?

A. No, I try to say my best truth what I can remember.

Mr. O'Connor: Q. Did you ever pay any money to Mr. Dougherty? A. No, sir.

Q. Did you ever see any money paid to him?

A. Sure, I give it to Rodoni.

Q. You gave it to whom? A. Rodoni.

Q. Did you ever see Rodoni give it to Dougherty? A. No.

Q. You don't know whether Rodoni ever paid him or not, then, do you, of your own knowledge?

A. I don't know.

Q. You don't know?

A. He say he paid. [136]

Q. Irrespective of what he said, you weren't present and you don't know whether he paid or not, do you? A. No.

Q. Who was the owner of that still?

Mr. Mathewson: I object to the question on the ground that it is improper cross examination.

The Court: I will allow it. Who was the owner.

A. Rodoni used to own that.

Mr. O'Connor: Q. Rodoni was the owner of the still? A. Before.

Q. I am not talking about it before; after you started to operate it? A. Me and Bianchini.

Q. You and Bianchini. Was anybody else an owner besides you? A. No, sir.

(Testimony of Guiseppi Biagi.)

Q. You were the two proprietors?

A. Yes, sir.

Q. What was Rodoni? Merely an employee?

A. Employee.

Q. And the other men that were working on the still were mere employees? A. Employees.

Q. During the whole time that that still was there you and Bianchini were the owners and proprietors of the still? A. Yes, sir.

Q. Did Dougherty have any interest in the still?

A. No, sir.

Q. And did you have any agreement with Dougherty whereby he was to receive any profits of the still? A. No, sir.

Q. Was he to take any of the losses on the still?

A. No, sir.

Mr. O'Connor: That is all.

ANGELO RODONI,

called for the Defendant; sworn.

The Clerk: Please state your full name to the Court. A. Angelo Rodoni. [137]

Direct Examination

Mr. Mathewson: Q. Where do you live, Mr. Rodoni? A. Soledad.

Q. What do you do? A. Milker on dairy.

Q. You entered a plea to a charge of violating the Internal Revenue Law by the operation of a dis-

(Testimony of Angelo Rodoni.)

tillery on the Frank Dougherty place, did you not?

A. I did.

Q. And you were sentenced? A. Yes.

Q. What was the sentence?

A. 90 days in the County Jail and \$200 fine.

The Court: Q. You are the one that was working there?

A. Yes, I working, your Honor.

Mr. Mathewson: Q. Do you remember when you first went on the Dougherty place?

A. I don't remember exactly.

Q. As near as you can remember?

A. It was about in October, I think, 1934.

Q. Did you go on the Dougherty place alone or with others?

A. With Bianchini and Biagi.

Q. About what time of the day did you go there?

A. Oh, if I recall, it was before noon.

Q. Did you see Mr. Dougherty then?

A. Yes, we went up on the road and he was there in the corral by the house; I don't recall exactly the place where he was.

Q. Did the three of you drive in the place and have a conversation with Mr. Dougherty?

A. We stopped the car and we got off of the car and we went up and talked to him.

Q. Do you remember the conversation you had with Mr. Dougherty? A. Yes.

Q. Will you relate it to the judge?

(Testimony of Angelo Rodoni.)

A. Well, these two guys, Bianchini and Biagi, they didn't know Frank Dougherty. Of course, I didn't know him very well, but I know him, seeing him on the street [138] and so on, so I told him that these two fellows are interested in renting a piece of land from him for some purpose or another. So I told him, "These are the two guys; you can have a talk with them.

Q. Mr. Dougherty then had a conversation with Mr. Biagi and Mr. Bianchini? A. Yes.

Q. Were you present at the time of that conversation? A. Yes.

Q. What was the conversation?

A. Well, they told him they would like to rent the barn to make a little whiskey, as they was going to make a little arrangement so it would be leased for cattle. It shows on the lease it would be rented for the purpose of raising cattle and stuff like that.

Q. Did you have any conversation as to the amount of rental?

A. Well, I heard Biagi and Bianchini tell him that they was going to pay him between \$125 or more a month.

Q. Do you know the rental that was to be paid? You said \$125 or more a month. A. Yes.

Q. Do you know whether that rental was to fluctuate with the money they received from the still?

Mr. O'Connor: That is objected to upon the ground that it is incompetent, irrelevant, and immaterial.

(Testimony of Angelo Rodoni.)

The Court: State the conversation—not what he knew.

Mr. Mathewson: Q. Did you subsequently sign a lease? A. Yes.

Q. I show you Plaintiff's Exhibit 1 in evidence and ask you if that is the lease that you signed?

A. Yes.

Q. How did you sign it? What name did you use in signing it? A. Coranti Perolli.

Q. Did you sign that name, "Coranti Perolli"?

A. Yes.

Q. Where did you sign that name?

A. The house on the ranch.

Q. Do you know where this lease was prepared?

A. Bianchini told me it was prepared in San Juan. [139]

Mr. O'Connor: I move that that go out as hearsay and not binding upon the plaintiff.

The Court: It will go out.

Mr. Mathewson: Q. You signed that lease on the ranch. Who gave it to you?

A. I don't recall if it was Biagi or Bianchini, but it was one of the two. They told me to bring it over to Frank and sign it.

Q. After the lease was signed, did you work around the place?

A. I worked for a few days helping the guys.

Q. What did you help them with?

A. Well, moving and fixing pipes, and whatever was necessary to put up this equipment.

(Testimony of Angelo Rodoni.)

Q. Did you help them in moving the equipment in? A. Yes.

Q. Did anybody besides Biagi and Bianchini help you with the equipment? A. Yes.

Q. Who else?

A. I think Brunza Quinto.

Q. Brunza Quinto, Biagi, and Bianchini, and yourself unloaded the equipment? A. Yes.

Q. Anybody else? A. No.

Q. Did you work in the still after it was set up?

A. No.

Q. Did you work there in the spring of 1935?

A. Yes.

Q. What did you do then?

A. Truck driver.

Q. What were you hauling?

A. I was hauling molasses and sugar—supplies to run the still.

Q. Do you know how many trips you made?

A. Oh, between 12 or 15 trips, I guess.

Q. Do you recall what time of the day it was that you would make the trips?

A. I used to go down there at the ranch about eight or nine o'clock at night.

Q. Would you leave again the same night?

A. Well, usually it was about the same time every night. [140]

Q. You would arrive there about eight or nine o'clock at night? A. Yes.

(Testimony of Angelo Rodoni.)

Q. What road did you use in driving into the place?

A. Sometimes I used to go by the River Road to Monterey; sometimes I used to go out to Chular and take the old County Road and go up to the ranch.

Q. In driving in to the Dougherty ranch which road did you use in going from the River Road in to the still?

A. You mean the road that goes into the ranch?

Q. Yes.

A. There was only one road that goes into the ranch to the place where the still was.

Q. That was the only road you used?

A. Yes.

Q. That was through the gate in the fence, the south gate towards Chular? A. Yes.

Q. Did you ever pay any money to Mr. Dougherty?

A. Well, one time I was up there Biagi and Bianchini they gave me \$125 and said "You bring it over to Frank."

Q. Did you? A. Yes, I did.

Q. Do you recall about when that happened?

A. I don't remember the date.

Mr. Mathewson: That is all.

Cross Examination

Mr. O'Connor: Q. Now, when you first talked to Mr. Dougherty, you and Bianchini and Biagi,

(Testimony of Angelo Rodoni.)

tell us what the conversation was, as you recall it.

A. Well, that is what I told just now.

Q. Well, tell us again.

A. We was out there and we drove by and I saw Frank around the yard or the corral, I don't remember exactly the place where I saw him. We stopped and we got off, and I told Frank, I says, "Here is two men, Biagi and Bianchini, that is the name, and they are interested in renting a piece of land from you for raising cattle or some other purpose." And I guess then [141] they went along with Frank Dougherty and had a talk with him.

Q. Were you present when they talked to Dougherty? A. Yes.

Q. What did they say?

A. They say that they were going to rent the barn to make some whiskey.

Q. To make some whiskey? A. Yes.

Q. They used the word "whiskey"? Did they use the word "whiskey"? A. Yes.

Q. Is that all? A. That is all.

Q. That is all that was said at that time?

A. Yes.

Q. Did they say anything about a still?

A. That is to make whiskey.

Q. Did they mention the word "still"?

A. They expect to put up a still to make whiskey.

Q. They expect to put up a still to make whiskey? A. Yes.

(Testimony of Angelo Rodoni.)

Q. They also said they wanted to run cattle and raise chickens, is that right?

A. They said, "You could make a lease that shows that the ranch is rented to raise cattle."

Q. All right; the question of raising cattle was mentioned, wasn't it? A. It was.

Q. Now, when did you sign that lease, Mr. Rodoni?

A. I don't recall the date when I signed the lease.

Q. You don't recall the date?

A. I don't remember.

Q. Do you remember testifying at the last trial of this case? A. Yes.

Q. Do you remember at the last trial that you were put on the witness stand, you were examined by the United States Attorney, you were cross examined by me, and that you then left the stand as a witness, and up to that time you hadn't testified that there was any conversation with Dougherty about running the still, there; but that after consulting with your attorney, Mr. Molloy, and after having talked to Mr. Mathewson, of the United States Attorney's Office, you came [142] back the next day and testified that you did have a conversation with Dougherty about using the barn for a still? Do you remember that?

A. I remember that, but what I said when they first asked me what was the conversation, I told them just the way I say it now.

(Testimony of Angelo Rodoni.)

Q. You didn't tell them anything about a still when they first asked you? A. I did.

Q. The first time you testified? A. Yes.

Q. You told them that the first time you testified? A. Yes, sir.

Q. I would ask you to read your testimony taken on January 29, 1936, beginning on page 2, January 29, 1936, at two p. m., and continuing to page 18, and ask you if you can show me anywhere in there where you mentioned anything in there about a still?

The Court: Ask the attorney.

Mr. O'Connor: Will you stipulate?

Mr. Mathewson: If the Court please, the question, itself, is argumentative, but so far as I see it there is nothing in the report referred to, there is no direct statement with reference to the operation of a still.

Mr. O'Connor: There is no statement in there that he had a conversation with Dougherty in which he said or the other men said that they wanted to use this barn for a still or to make whiskey?

Mr. Licking: I will further stipulate that he was never asked the question, if the Court please. I will stipulate that the answer isn't in there.

Mr. O'Connor: That he did not so testify?

Mr. Licking: He never was asked that question.

Mr. O'Connor: Q. And isn't it a fact that you came back the next day and said that after talking to your attorney, Mr. Molloy, the night before, that

(Testimony of Angelo Rodoni.)

you were determined to come back and tell the [143] truth; isn't that correct? A. Yes.

Q. And then on the next day for the first time you testified to this conversation with Dougherty about their using that place to make whiskey; isn't that true?

A. I don't quite understand that question.

Q. All right; it is immaterial; isn't it true that at the last trial you testified that there was no conversation with Dougherty concerning using the land to run cattle on? A. No.

Q. Did you so testify at the last trial?

A. Yes.

Q. You did? A. Yes.

Q. Are you sure? A. Yes.

Mr. O'Connor: Will you stipulate that he did not, Mr. Licking?

Mr. Licking: I can't stipulate.

The Court: I am an innocent bystander here, but was he asked if there was any cattle?

Mr. O'Connor: Yes, I will call his attention to the cattle.

The Court: Call it to his attention.

Mr. Licking: If it is your intention to impeach the witness by the use of the transcript, I would suggest before asking the question about his testimony that you show him the transcript. I would suggest otherwise that you are bound by his answer.

The Court: It may be helpful to me: Do you know of any reason why I gave him a fine of \$200?

(Testimony of Angelo Rodoni.)

Mr. O'Connor: Because he testified for the Government.

The Court: Was that your state of mind?

Mr. O'Connor: I think that it was represented to your Honor that he was entitled to consideration because he testified for the Government.

The Court: Yes.

Mr. Licking: I suggest, your Honor——

Mr. O'Connor: And he was an employee also.

[144]

The Court: I have a peculiar state of mind on it. Now and then I check on myself, and I have a fair memory, although at times it fails me. But if I remember, that is the reason I sentenced the other two defendants to longer sentences, and this man got 90 days or \$200.

Mr. O'Connor: He was an employee; he wasn't an owner; and he also testified for the Government, and I think it was represented to your Honor at the time that he had testified as a witness for the Government. I assume he was entitled to consideration from that fact.

Mr. Licking: If I may refresh your Honor's recollection and possibly dispell the idea that counsel has, that your Honor's sentence was based on any idea that any consideration be given to him for such service as he rendered, the defendant Quinto was given a penalty of \$500 or 90 days, and the defendant Brunzo was given a \$500 fine or 30 days. This witness was fined \$200 and 90 days.

(Testimony of Angelo Rodoni.)

Mr. O'Connor: Of course, this witness was in a little different position than some of the other defendants. While he was an employee he testified at the last trial that he was the man that purchased the still from some cousin of his and sold the still to the other two defendants.

The Court: It is beside the issues here. I also sit in judgment on myself in relation to this work. The only reason I am inquiring, it might be helpful to me later on in doing the things I am expected to do.

Mr. O'Connor: Page 24 of the transcript.

Mr. Licking: Just a minute. What line?

Mr. O'Connor: My transcript is not numbered by line. It would be about the sixth line. I will show him the testimony.

The Court: Can you read? A. Yes.

Mr. Licking: If the Court please, if I may suggest that at [145] some time the Court read this testimony from page 24, beginning with the wording indicated, if I may offer it to the Court to read it at the time.

The Court: Proceed.

Mr. O'Connor: Q. Start reading, Mr. Rodoni, with that line and read down to the end of the page.

A. Each say—

Q. Read it to yourself. I ask you if at the last trial, Mr. Rodoni, in answer to the following questions you gave the following answers:

(Testimony of Angelo Rodoni.)

Mr. Licking: If the Court please, before reading the questions and answers, the Court having already read it, I would suggest that the evidence can be read for only one purpose, of impeachment of the witness.

Mr. O'Connor: He has already testified——

Mr. Licking: If that is the purpose——

Mr. O'Connor: That is the purpose.

Mr. Licking: And the purpose, I take it, is to impeach an answer he has given to a question which you have asked him?

Mr. O'Connor: That is correct.

Mr. Licking: May I have that question read? May I have the question of counsel read?

(The reporter here read from the previous record.)

Mr. Licking: If the Court please, I submit that the matter is in no way impeaching.

The Court: The transcript discloses that he did at the other trial state in relation to the lease "They said they were going to make a lease to show that it was for some other purpose." Did they say anything about dry cows?

Mr. O'Connor: Yes, but he didn't.

The Court: They said to make whiskey.

Mr. O'Connor: There was no testimony in the transcript that [146] there was any mention about dry cows. He said today there was.

The Court: Yes, on page 24, the seventh line from the bottom.

(Testimony of Angelo Rodoni.)

Mr. O'Connor: Where is any statement by him about dry cows? All he says, "They were going to make the lease to show that it was for some other purpose."

Mr. Licking: That is all.

Mr. O'Connor: They don't say anything about dry cows.

The Court: He was asked the question, "Did they say anything about dry cows?" The answer is "They said they were going to make the lease and make it to show it was for some other purpose."

Mr. O'Connor: That is in answer to the question. I asked him that at the last trial.

The Court: Ask him now. I think you will save time anyway.

Mr. O'Connor: He has testified now already that he did say at the last trial—I think it is immaterial, anyway, so I will withdraw it.

Q. Mr. Rodoni, there has been a tax assessed against you as the result of the operation of this still; isn't that correct? A. Yes.

Q. How much is the amount of that tax?

A. I don't recall the amount.

Q. It is in excess of \$7000, isn't it?

A. I guess it is about that much.

Q. And you consulted an attorney concerning it, haven't you? A. Yes.

Q. Mr. McShane? A. Yes, sir.

Q. And you have been advised, have you not, that some of the taxes have already been collected from Mr. Dougherty, haven't you? A. Yes.

(Testimony of Angelo Rodoni.)

Q. You knew that that would deduct from the amount of tax that you would have to pay?

A. Yes, sir.

Mr. O'Connor: That is all. [147]

Mr. Mathewson: No questions.

That is the Defendant's case, your Honor.

The Court: Is the matter submitted?

Mr. O'Connor: No, your Honor, I have some rebuttal testimony. I haven't it available at this time. Tomorrow morning.

The Court: Very well; we will take the adjournment until tomorrow morning.

(Thereupon an adjournment was taken until Wednesday, June 14, 1939, at ten o'clock a. m.)

[148]

Wednesday, June 14, 1939.

FRANK A. DOUGHERTY,

the Plaintiff, being recalled as a witness in his own behalf in rebuttal, testified as follows:

Mr. O'Connor: Q. Mr. Dougherty, approximately how much of the 20 acres that we have been discussing here is hay land?

A. I should judge ten acres.

Q. In a normal year or in a fair year how much hay will that land produce to the acre?

A. About two tons and a half.

(Testimony of Frank A. Dougherty.)

Q. In a fair year what is the normal sale value of that hay on the ground?

A. About \$12—\$12.50.

Q. That is loose hay on the ground?

A. Loose hay.

Q. What would be the price of it baled?

A. Baled we sold hay for \$17.

Q. That would be from the barn?

A. From the barn.

Q. What does it cost you to bale hay?

A. About two and a half a ton.

Q. How much would you say it would cost you or cost the ordinary person operating under ordinary circumstances to put in that ten acres in hay and harvest it?

A. It would cost in the neighborhood of \$50.

Q. In the neighborhood of \$50? A. Yes.

Q. When you leased this land to those people that have testified here, did you put any limit on them as to what they could use the land for?

A. No, sir.

Q. You didn't tell them what they could or could not use it for? A. No.

Q. As far as you were concerned, they could have used it for any purpose they saw fit?

A. Any purpose.

Q. Did you at any time agree to receive from them a rental of \$125 [149] a month?

A. No, sir.

(Testimony of Frank A. Dougherty.)

Q. Did you ever receive a rental of \$125 a month? A. No, sir.

Q. Did you receive three payments of \$125 a month from these people? A. No.

Q. Is it the fact that the only rent you received was the money that you have testified to, a hundred dollars on two different occasions?

A. Yes, sir.

Q. Now, then, you heard these men testify yesterday that when they talked to you they told you that they were going to use this barn for the purpose of an illicit still. Did they ever mention "still" to you? A. No, sir.

Q. Any of them? A. No, sir.

Q. The question of the still or the use of the premises for the making of whiskey was never mentioned to you at any time? A. No, sir.

Mr. O'Connor: You may cross examine.

Cross Examination

Mr. Licking: Q. You say you never put any limit on their use of the property? A. No, sir.

Q. Calling your attention to Plaintiff's Exhibit No. 1 and particularly to the covenant and agreement upon the third page, I ask you to read that typewritten portion there.

A. That part I did.

Q. You did put— A. Yes, sir.

Q. —this provision: "and it is further agreed that said leased property will not be used in any

(Testimony of Frank A. Dougherty.)

manner or form so as to conflict with any Federal or State laws or any county ordinances. Violation of which will cancel this lease and the lessor will immediately remove all persons therefrom." Why did you put that in the lease?

A. Well, they do it in all leases.

Q. Why did you put it in this lease?

A. Well, supposed to [150] be the proper thing to do.

Q. Did you regard it as the proper thing to do?

A. Yes, sir.

Q. You have heard these people testify that they moved the still into this place which is, by the way, how far from your house?

A. Well, from where I stay it is about 250 feet.

Q. About 250 feet. Don't you ever get around your house, around to the back of the house in the course of a year or closer—

A. Very seldom, you know, I happen to walk around that way.

Q. You get around that way; it is a little closer; isn't that so? A. No, it is further.

Q. About 250 feet? A. Yes, sir.

Q. Is the closest place to it. You have heard these people testify that they moved the still in there; that they operated that still 21 or 22 days; that they removed it; that they dumped the disabled boiler into the arroyo off from the place; that they used the cabin on your place for some of their employees to sleep; that they discontinued operations

(Testimony of Frank A. Dougherty.)

there for a considerable time; that they afterwards reinstalled the still, put in a new boiler, and operated it again. Did you see any of those things going on? A. No, sir.

Q. Did you ever look there to see what they were doing? A. No, sir.

Q. Well, then, again, why did you put that particular clause in the lease?

Mr. O'Connor: I submit the question has been asked and answered, if your Honor please; repetition of the former cross examination; nothing was asked on direct concerning this matter.

The Court: Overruled.

Mr. O'Connor: Go ahead and answer.

A. Why did I?

Mr. Licking: Yes.

A. That is why all people do mostly in leases.

[151]

Q. But you said you considered this a proper thing to have in the lease. A. Yes, sir.

Q. You considered it a part of your duty to see that your property was not used to violate the law?

A. Yes.

Q. That is why you put it in there, wasn't it?

A. Yes, sir.

Q. Then why didn't you do it? Why didn't you ever look?

Mr. O'Connor: I object to that on the ground that it is argumentative, if the Court please.

The Court: Objection sustained.

(Testimony of Frank A. Dougherty.)

Mr. Licking: Q. What was actually done with this hay on that particular piece of hay ground the year the still was seized?

A. That hay laid there.

Q. That hay laid there? A. Yes, sir.

Q. It was cut, wasn't it?

A. Yes, sir, it was cut.

Q. Who cut it? A. I cut it.

Q. How close did that take you to the still premises?

A. Well, I guess about a hundred yards.

Q. About a hundred yards. I understand from your lease that this property, this 20 acres, with this hay land on it, was leased to these gentlemen who operated the still; that is correct, isn't it?

A. I didn't hear you.

Q. Wasn't this hay land leased, as the lease recites, to the people who operated that still?

A. Yes, sir, but there is a corral there quite a ways away from the barn.

Q. How did you happen to cut the hay?

A. He spoke to me to do it when he got the place.

Q. He said he wanted you to cut the hay?

A. Yes, sir.

Q. For yourself? A. No, sir.

Q. Just wanted it cut to lay on the ground?

A. I cut it and piled it; that was the last I heard of it. I just pulled it together with [152] the rake.

(Testimony of Frank A. Dougherty.)

Q. Did he pay you for cutting it and piling it?

A. No, sir.

Q. What? A. No, sir.

Q. When did you cut it? How long before the seizure?

A. What?

Q. How long before the seizure of the still, there, did you cut it?

A. It was cut about the latter part of May and the first of June.

Q. When was the seizure?

A. Just before that was knocked over.

Mr. O'Connor: June 3rd.

Mr. Licking: Q. June 3rd. You usually cut that hay in the latter part of May, don't you?

A. Yes, sir.

Q. Wasn't that just the normal harvesting operation that was going on, and didn't you really intend to use that hay, yourself?

A. That hay I cut, myself?

Q. Didn't you intend to use it?

A. No, sir, that is their hay.

Q. What did they pay you for cutting it?

A. They didn't pay me anything. I spent about \$50 putting it in and cutting it for them.

Q. You spent about \$50 putting it in and cutting it?

A. Yes, sir.

Q. And you did cut it as a favor to them?

A. Sir?

Q. You just cut it as a favor to them?

A. That is all.

(Testimony of Frank A. Dougherty.)

Q. What does it cost you to cut hay on that land?

A. Well, I think they cut hay this year for a dollar and a quarter an acre—cut and bunch it for a dollar and a quarter an acre.

Q. Then you just as a favor to them cut and bunched the hay? A. That is right.

Q. As a matter of fact, wasn't it definitely understood from the first that they weren't interested in the ground at all, all they wanted was the use of the barn? A. No, sir.

Q. That wasn't? A. No, sir.

Q. You are quite sure you never noticed any activity on their part at all? A. No, sir. [153]

Q. On these leased premises. You are equally certain you never went over there to look?

A. Never had no occasion to.

Q. Never had any occasion to look?

A. No, sir.

Q. Again, so I will be sure about that, did you believe that that clause in the lease prohibiting an illegal use of your property was an improper clause?

Mr. O'Connor: Just a moment. Objected to upon the ground it has been asked and answered three times.

The Court: He may answer.

A. I think it was right.

Mr. Licking: Q. Do you believe that your own actions in never looking at the property to enforce that were right?

(Testimony of Frank A. Dougherty.)

Mr. O'Connor: Just a moment. Objected to upon the ground that it is argumentative; what he believed whether it was right or wrong is immaterial.

The Court: Well, the fact is that he didn't. Let the record stand.

Mr. Licking: No further questions.

Mr. O'Connor: That is all, Mr. Dougherty.

KASPER E. CADLE,

called as a witness on behalf of the plaintiff in rebuttal; sworn.

The Clerk: Please state your full name to the Court. A. Kasper E. Cadle.

Direct Examination

Mr. O'Connor: Q. Mr. Cadle, where do you reside? A. Salinas.

Q. How long have you lived there?

A. 10 years.

Q. What is your occupation?

A. Real estate business.

Q. How long have you been in the real estate business? A. About a year and a half. [154]

Q. Prior to being in the real estate business what was your occupation?

A. I managed the H. P. Garin Company's holdings down in that country, farming—

(Testimony of Kasper E. Cadle.)

Q. You managed the H. P. Garin Company, who are growers and farmers in that area?

A. Yes, sir.

Q. They were one of the largest farmers and growers down there; is that correct?

A. Yes, sir.

Q. Do you know where the Dougherty ranch is—the so-called Dougherty ranch? A. Yes, sir.

Q. Do you know where the Dougherty house is?

A. Yes, sir.

Q. Are you familiar with the 20 acres of land southwest of the Dougherty house and fronting on what is known as the River Road?

A. Yes, sir.

Q. Now, then, Mr. Cadle, you know, do you not, that there is a barn on there that will accommodate 16 horses?

A. I know there is a very large barn; I have seen it; I never paid much attention as to how many it will accommodate.

Q. You are familiar, I assume, with the value of lands and rental values in that particular area down there, are you?

A. Yes, sir; we had a ranch right below it, H. P. Garin, that I leased while I was with them, just down the road a little ways.

Q. Now, then, what would you say would be a fair rental value for the twenty acres of land I have described, including the use of barns and water supply, if that ranch was to be used for instance

(Testimony of Kasper E. Cadle.)

for the running of cattle, or chickens, and for the hay that was on the land? What would you say would be a fair rental per acre per year?

A. Oh, \$18 to \$20 an acre.

Q. Would you say that \$20 an acre would be an excessive rent? A. No.

Mr. O'Connor: You may cross examine. [155]

Cross Examination

Mr. Licking: Q. Would you say that \$125 a month would be an excessive rent?

A. For the——

Q. For that piece of land.

A. \$125 a month, yes, it would be a good rent.

Q. I didn't ask you whether it would be a good rent or not. I said, would you say that would be an excessive rent, out of line and proportion to the value of the property for the purposes mentioned or for any legitimate purpose?

A. \$125 a month for the entire——

Q. Yes, would that be out of line?

A. That would be out of line.

Q. That would be out of line for any legitimate purpose? A. Yes.

Mr. Licking: That is all.

Mr. O'Connor: That is all.

ANGELO V. RAINDA, JR.,

called for the Plaintiff in Rebuttal; sworn.

The Clerk: Please state your full name to the Court. A. Angelo V. Rainda, Jr.

Direct Examination

Mr. O'Connor: Q. Mr. Rainda, where do you reside? A. In Salinas.

Q. What is your business or occupation?

A. Real estate.

Q. How long have you been in that business?

A. About fifteen years.

Q. Do you deal in farm lands in the area in the Salinas Valley?

A. Practically exclusively in real estate.

Q. And that includes farm lands in that area?

A. Farm lands in that area.

Q. Do you know where the Frank Dougherty place is? A. Yes.

Q. Do you own a place of your own nearby there? A. Just a short ways from it, yes.

Q. Directing your attention to the 20 acres of land southwest of the [156] Frank Dougherty residence and fronting on the road known as the River Road, are you familiar with that 20 acres?

A. Yes.

Q. Are you familiar with land values and rentals in that particular area?

A. I believe I am, sir, yes.

Q. What would you say would be a fair rental value for the 20 acres of land I have described, in-

(Testimony of Kasper E. Cadle.)

cluding the barn that is situated thereon, the water supply, the hay field, grazing land, if the property were to be used for the purpose of raising chickens and running cattle? What would you say would be a fair rental value for that land?

A. For raising chickens?

Q. And running cows.

A. Or running cattle, dairy stock?

Q. Dry stock. A. Dry beef stock?

Q. All I can describe it is dry stock, and the value of the hay land.

A. The reason why—may I explain why I ask that?

Q. Yes; go ahead.

A. The property, itself, has several valuations due to its locality, the vicinity near Salinas, and there are several ways of establishing valuation on that property, and if a man wanted to use it for any one of several things he could pay several different rentals.

Q. Yes.

A. So for a chicken ranch, perhaps \$500, \$600 a year would not be too exorbitant.

Q. Would you say that \$400 a year would be a fair rental for that property?

A. I would say it would be a very fair rental.

Q. It wouldn't be too much?

A. No, it wouldn't be too much.

Q. The land is adaptable for other purposes, too, isn't it?

(Testimony of Kasper E. Cadle.)

A. The value of the property is in the fact that it has buildings, has improvements, and that is where the largest valuation of that property rests, because the demand in my business has been for the past—and at least since the time that the lettuce industry has been in Salinas, the canned vegetable industry, it has always been that [157] there has been a great demand for property anywhere close to Salinas of that type, five, ten, twenty, thirty acres, with buildings of some type on them, especially with water where they could bring their lettuce culls to, or truck them to, or carrot culls, or bean screenings, or grain screenings—grain gleanings. All those added to the value, especially the closer to Salinas the better it was for them, or closer to the source where these culls were taken. So I would—I have ten acres on my own place with barn and water, and I have turned down \$500 a year rental just within the last week.

Mr. O'Connor: You may cross-examine.

Cross Examination

Mr. Licking: Q. How about the chickens? What use would this hay land have for the chicken industry?

A. It would have this use: they could put—they would put perhaps their chicken coops and chicken houses there and there would be yards to run the chickens, and they could run on even less than that several thousand chickens.

(Testimony of Kasper E. Cadle.)

Q. Yes, but what I had in mind, they could probably run a great many chickens on 20 acres; in other words, the only value of the land as far as the running of chickens is concerned is, I suppose, for coops and pens? A. And yards.

Q. There is no feed for chickens on the land?

A. There could be. He could have ten acres——

Q. There isn't; I didn't ask what there could be.

A. There is, yes.

Q. What feed is there? Do they eat grass, like cows? A. What do you mean?

Q. I mean cows eat grass, but I haven't observed chickens do it down there, have you?

A. Chickens eating grass?

Q. Yes.

A. I don't know whether they do. [158]

Q. You don't know very much about the chicken business?

A. I think I do know something about it.

Q. You don't know whether they eat grass or not? A. Would that be——

Q. What I am getting at is this: there isn't anything on that land as I listened to the testimony here, there didn't seem to be anything on it except grass and some hay.

A. Perhaps that hay land could be put into barley or wheat, which it would be—it would be barley hay, or wheat hay, or alfalfa hay, or some type of hay.

(Testimony of Kasper E. Cadle.)

Q. Do you think that piece of land is susceptible of cultivation for those crops?

A. I think it would be for barley and wheat, yes.

Q. How about the barn, as far as the chicken business is concerned? How would he use this horse barn?

A. For chicken business?

Q. Yes. A. Well, that I don't know, sir.

Q. Can you think up any conceivable set of circumstances where \$100 a month would not be—that is, for any legitimate purpose, would not be an excessive rental?

A. \$125 a month?

Q. Yes.

A. Oh, I suppose if somebody wanted a riding academy on it—they are very horse-minded around Salinas. There are a considerable number of horses and people quite crazy about horses. There is a couple of academies there now. I suppose it would pay.

Q. You suppose \$125 a month—do you expect the Court to believe you that \$125—

A. I wouldn't have said it, sir, if I didn't.

Q. \$125 a month. That is how much a year?

A. Perhaps \$1500.

Q. \$1500 a year. What does the land sell for, land of that type, ten acres of hayland and five acres of rolling pasture land with oak trees and what-not on it? What does it sell for?

A. It is a rather indefinite way to figure it. It

(Testimony of Kasper E. Cadle.)

would depend on demand what a man would pay for it. [159]

Q. What does the land sell for without improvements? I am just getting at——

A. There is cases I can recite where it has gone for as high as \$150 to \$200 an acre.

Q. What is the average?

A. Say \$75 to \$80 an acre, without the improvements.

Q. \$75 to \$80 an acre without the improvements. Then, putting your top price on all of it, putting this pasture land in—you don't mean the pasture land sells for that?

A. Everything that is there, the oaks—there is some level land there on the lower end of the pasture land.

Q. There is ten acres of level land——

Mr. O'Connor: Let him finish his answer.

Mr. Licking: Q. Would \$80 be the top price for it?

A. I wouldn't want to say what the top price would be, because demand would make the price, and I don't *know great* the demand would be.

Q. In other words, if somebody wanted the land for some particular purpose and was willing to pay more than it was worth, why, he would take it?

A. Yes.

Q. Surely, but what I am trying to get from you as an expert is what is the going price for land of that type in the Salinas area. There is, as you

(Testimony of Kasper E. Cadle.)

know, I assume, as an expert, a going price usually for lands of a certain type in a certain district. I just wanted to get an idea what that was.

A. Well, I could cite a rental right this side of it. That is the only way you can definitely set your value what it is worth.

Q. I am speaking of the sales price; I am speaking what the land is worth an acre.

A. Oh, I see.

Q. You just said from \$70 to \$80 an acre.

A. Rental.

Q. Not rental.

A. You had me confused; I didn't understand you. I thought you said what it would rent for.

[160]

Q. I didn't ask you what it would rent for. I asked you what land like that sells for.

A. Oh, \$70, to \$80 an acre without improvements.

Q. Take your top price——

Mr. O'Connor: Let him finish his answer.

Mr. Licking: Q. You said \$70 to \$80 an acre?

A. Without any improvements.

Q. We will take the land, then, at your top price, the whole thing at \$80; that is \$1600 for the whole piece of land, that is, to buy the land.

A. Yes, sir.

Q. What did it cost to put up the barn?

A. Maybe \$1500; maybe a little more.

(Testimony of Kasper E. Cadle.)

Q. That is \$1500 and \$1600; that is \$3100 that you could buy it for and you expect the Court to believe that a fair rental for that would be \$1500 a year?

Mr. O'Connor: He didn't say that.

A. I didn't say that that would be a fair rental. I just cited—you asked me what it would be.

Mr. Licking: Q. I asked you if there was any conceivable set of circumstances where \$125 a month would be a reasonable rental for it and you said there was if somebody wanted it for a riding academy.

A. Yes, sir, that is correct; there is nothing exorbitant in that.

Q. Well, in view of the analysis of your own statement that it isn't worth over \$3100 to buy it outright, do you expect the Court to believe that \$1500 a year would under any circumstances be a reasonable rental?

Mr. O'Connor: Just a moment. I object to that on the ground that it is incompetent, irrelevant, and immaterial, what he wishes the Court to believe. That is immaterial. [161]

The Court: State the fact.

Mr. Licking: Is that a fact, that a piece of land worth, according to your own figures, \$3100, is reasonably under any circumstances— —

Mr. O'Connor: Just a moment.

Mr. Licking: Let me finish my question before

(Testimony of Kasper E. Cadle.)

you start your objection, if you don't mind. Will you read my question?

(The reporter read the question, as far as framed.)

Mr. Licking: Q. —is reasonably, under any circumstances, worth \$1500 a year for rent?

The Court: Answer that question.

A. Why, well, it wouldn't necessarily be reasonably so, but it could be so. They do pay a very stiff rental, yes; I am not very versed in riding academies.

Q. Then what are you testifying about it for if you were not versed in it? A. What is that?

Q. Then what are you testifying about it for if you are not versed in it?

A. Well, the first question you asked me whether it was conceivable, whether any conceivable—

Q. I didn't ask you if it was conceivable; I said if under any conceivable legitimate use that was a reasonable rental. Again, if you can answer my question, do you think that under any conceivable, legitimate use, a piece of land worth only \$3100 with improvements is worth \$1500 a year in rental value?

A. I didn't say that it was worth \$3100, because you only quoted the land and the buildings. There is water on the place, and fences, and corrals, and those all have to be taken into consideration, and perhaps the place is worth a good deal more than that.

(Testimony of Kasper E. Cadle.)

Q. What kind of water is there on the place, spring or pump? A. I think there is a pump.

Q. There is a well and pump?

A. Well and pump. [162]

Q. You can pump water any place in the valley, can't you?

A. Certainly you can. Not any place in the valley; I have hit some dry wells in the valley.

Q. At that level over there?

A. At that level.

Q. At that level through there do you hit dry wells? A. At a much deeper level than that.

Mr. Licking: I think that is all.

Mr. O'Connor: That is all, Mr. Rainda.

Mr. Licking: Q. Just a minute. Did you ever look at this piece of land, yourself, ever go on it?

A. Yes, I have been on it, sir.

Q. You have been on it. You say you think there is a well on it. As a matter of fact, isn't it true that there is no well at all, and that the well is on the adjoining property?

A. I don't know just what the boundary is. I can't say what the 20 acres should have over this way or the other way. I know the boundary on the other side, because there is a fence.

Q. I thought you said there was a fence.

A. There is a fence around the front and around the other side, and around the upper end, the corrals.

Q. Where is the well?

(Testimony of Kasper E. Cadle.)

A. I presumed that that well which appears to be right in there was on the place, too.

Q. You don't know whether the well is on the place, or not?

A. I don't definitely know, no.

Mr. Licking: I see. That is all.

JAMES H. RILEY,

Called for the Plaintiff in Rebuttal; Sworn.

The Clerk: Please state your full name to the Court. A. James H. Riley. [163]

Direct Examination

Mr. O'Connor: Q. Mr. Riley, where do you reside? A. In Salinas.

Q. How long have you lived there?

A. All my lifetime.

Q. What is your business or occupation?

A. Well, farming and cattle raising.

Q. How long have you been in that business?

A. Oh, ever since—did nothing else.

Q. You have done that all your life?

A. Yes.

Mr. Licking: We will admit this witness' qualifications.

Mr. O'Connor: Q. Do you know the 20 acres surrounding the Dougherty house on the River Road? Are you familiar with that 20 acres of land?

A. I am familiar with the place very well.

(Testimony of James H. Riley.)

Q. Do you know where the Dougherty home is?

A. Yes.

Q. Do you know where the barn and corrals are to the south of it? A. Yes.

Q. Do you know the hayfield and the 20 acres south of that fronting on the River Road?

A. Yes.

Q. How much would you say would be the reasonable value or would be a reasonable rental for that 20 acres, including the barns, corrals, out-houses, water supply, hayfield, grazing field? How much would you say would be a reasonable rental for that land?

A. Well, it all depends on what you use it for. For instance, you might—some chap might come along that would pay all kinds of rent for it. A place like that would be hard to get. You can't pick them up.

Q. Would you say for any purpose that \$20 an acre a year would be an excessive rent?

A. No, no.

Mr. O'Connor: You may cross-examine.

Cross Examination

Mr. Licking: Q. You mean it is worth \$20 an acre to run stock [164] on, that you as a stock man would pay \$20 an acre for that to run stock on?

A. You wouldn't really run stock on that.

Q. On the ten acres that is hay land. There is ten acres of this hay land.

(Testimony of James H. Riley.)

A. That has always been in hay.

Q. Ten acres.

A. I don't know exactly; I know the strip in there.

Q. There seems to be a concensus of opinion that the hay land—Mr. Dougherty, himself, says the hay land is ten acres, so we can take that as a fact. You have rented hay land there?

A. What is that?

Q. You have rented such hay land for hay and sold it during the time you have been there?

A. Yes.

Q. What terms do you usually get hay land on? We will say first when you are a purchaser, when you want to pick up the hay.

A. When you buy hay?

Q. Yes.

A. Oh, it all depends on the season. Sometimes you can pick up hay for \$7; sometimes you have got to pay \$15 for it.

Q. Ordinarily, when there is a good crop of hay, the price is low? A. Yes.

Q. When there is a poor crop of hay the price is higher?

A. It all depends. That all depends. It all depends on the demand and supply.

Q. What do you figure your own hay land is worth, hay land like that ten acres?

A. Oh, that hay land, I have seen three ton of

(Testimony of James H. Riley.)

hay on that piece. I don't think it is quite that much this year; it ain't quite as heavy.

Q. I am just asking you, what do you figure that hay land is worth?

A. What the land is worth?

Q. Yes. A. Just that piece?

Q. Yes. What is hay land in that country generally worth?

A. You are talking about the sale of your land?

[165]

Q. Yes.

A. You couldn't buy that land for \$200 an acre.

Q. You couldn't buy it?

A. No, you couldn't. It would go for a residential district. That is one of the most beautiful places in the valley right there.

Q. You are speaking of subdividing it for real estate purposes?

A. No, that would be—if you are asking me the value, I don't think it could be bought for that price.

Q. Is land scarce in the Salinas Valley?

A. It is hard to get hold of a little piece like that.

The Court: Q. How many thousand acres do you own?

A. Well, I don't—I just sold a piece, 1800.

Q. 1800? A. Yes.

Q. How long did you have that piece?

A. I have had it since 1912.

(Testimony of James H. Riley.)

Q. What did you pay for it?

A. I paid I think it was \$7 an acre.

Q. \$7 an acre. And you sold it for how much?

A. I got \$12.50 an acre for it. It is rough country; it is in the rough.

Q. No hay land in it, at all?

A. Oh, yes, there is hay land. It is rough country to get into.

Q. About how many acres of hay land did you have?

A. Oh, I guess there is about 40 or 50 acres could be put into hay.

Q. What is the most you ever got off it during that period?

A. I don't know. I have seen hay where the teams—you could hardly see the team.

Q. You didn't answer my question. How much, what tonnage did you get off it at any time?

A. Oh, it must be a rough guess; three ton to the acre.

Q. From how many acres?

A. About 30 or 40 acres we put in.

Q. What is the tax on that acreage?

A. The tax?

Q. Yes, a year? A. Really, I don't know.

Q. You paid the taxes and you don't know?

A. You mean by the acre? [166]

Q. What taxes did you pay for that acreage during that period that you owned this since 1912?

(Testimony of James H. Riley.)

A. The 1800 acres we paid about \$150.

Q. How many acres did you say was in this piece, altogether? A. About 1800.

Q. 1800 acres, and you bought it for \$7 and sold for— A. Twelve and a half.

Q. Twelve and a half?

A. It is in the rough country.

Q. Who did you sell it to?

A. A fellow by the name of Godetti.

Q. What does he do with it?

A. He is running cattle on it.

Q. How many cattle, do you know? Have you any idea? A. You mean that I run there?

Q. Yes.

A. Oh, I used to run probably 200 head on that.

Q. Is that all the taxes for 1800 acres?

A. I think it was \$160. We got a receipt on it.

The Court: Is that all from this witness?

Mr. Licking: That is all.

Mr. O'Connor: That is all, Mr. Riley.

COY SWINDLE,

Called on behalf of the Plaintiff in Rebuttal;
sworn.

The Clerk: Please state your full name to the Court. A. Coy Swindle.

(Testimony of Coy Swindle.)

Direct Examination

Mr. O'Connor: Q. Mr. Swindle, what is your business or occupation?

A. Field superintendent for Hardin Packing Company.

Q. What business are Hardin Packing Company engaged in? A. Produce, fresh vegetables.

Q. Do they farm in Salinas Valley?

A. Yes, sir.

Q. Are you familiar with the values of rentals and the values of [167] land in that valley down there? A. To a certain extent, yes.

Q. Do you know where the Frank Dougherty place is? A. Yes, sir.

Q. Are you familiar with the twenty acres southwest of the Frank Dougherty house on the River Road?

A. I am familiar with most of the ranch.

Q. Do you know where the horse barn is and the corrals immediately south of the Dougherty ranch house? A. South of his house, yes, sir.

Q. And you are familiar with that particular twenty acres that contain that barn, corrals, and the hay field below it?

A. Yes, I have horses in there now.

Q. And the grazing land there, too?

A. That is right.

Q. What you say, considering the water supply there, the corrals, the barn, the hay field, and the

(Testimony of Coy Swindle.)

grazing field, that a rental of \$20 a month would be an excessive rental per month—\$20 per year per acre would be an excessive rental?

A. I would say it all depends on what you are going to use it for.

Q. Tell me, do you think for any purpose that it would be excessive, \$20 an acre per year?

A. If you would raise lettuce on it, it would be worth a hundred, \$75.

Q. Do you think that land is adaptable for lettuce?

A. Part of it could be raised lettuce on; they do across the road.

Q. Can you tell me whether or not, assuming that the land was to be used for the purpose of running stock on it, or grazing land, or was for a combination of stock and the raising of chickens, would you say that \$20 per acre per year would be an excessive rental?

A. It doesn't sound excessive to me.

Mr. O'Connor: Cross-examine.

Cross Examination

Mr. Licking: Q. Do you run some stock, yourself? A. Horses, yes, sir. [168]

Q. You say you have them on this particular piece of land?

A. I have two at the present time.

Q. Oh. How long have you had the two there?

A. Since June, '35.

(Testimony of Coy Swindle.)

Q. Since June, '35. What do you feed them?

A. \$2 a month.

Q. What do you feed them?

A. Oh, pasture. I don't feed them anything but grass.

Q. Two of them?

A. Two there at that particular time. I have nine head on the ranch.

Q. Are you familiar with the amount of stock that that land will carry per acre per year?

A. Well, various numbers. I don't know how many they carry on an average.

Q. What I am trying to get at is this—let me see if I can express myself so you understand me: Are you familiar with the stock business at all, yourself?

A. Some.

Q. Do you know, then, what I mean by the carrying capacity of range?

A. Certainly.

Q. Well, now, then, what is the carrying capacity of that range in that District? How many acres do they figure necessary to run an animal per year?

A. The whole ranch, or this particular—

Q. I don't mean the whole ranch; I mean this particular area, this ten acres—we will say ten acres that apparently is rolling pasture.

A. Well, all I know, I see anywhere from say ten to twenty horses there most of the time.

Q. Don't you see that they are being fed hay also?

A. Part of the time.

(Testimony of Coy Swindle.)

Q. I am asking you again if you know anything about the carrying capacity of land of that type, itself? A. I couldn't testify to that.

Q. If you bring in feed from the outside I imagine there is room to line up in that twenty acres maybe 100 or 150 head of stock just to hold them there and feed them. A. Sure. [169]

Q. Just what is the carrying capacity of that type of land there when you rely on the productive capacity of the land, alone?

A. I am not familiar enough with it from that standpoint to say.

Mr. Licking: That is all.

Mr. O'Connor: That is all.

That is the Plaintiff's case, if your Honor please.

Mr. Mathewson: No further testimony.

[Endorsed]: Filed March 26, 1940. [170]

[Endorsed]: No. 9492. United States Circuit Court of Appeals for the Ninth Circuit. Frank A. Dougherty, Appellant, vs. John V. Lewis, Former Collector of Internal Revenue for the First District of California, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed April 12, 1940.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals, in
and for the Ninth Circuit.

No. 9492

FRANK A. DOUGHERTY

Appellant

vs.

JOHN V. LEWIS, former Collector of Internal
Revenue for the First District of California,
Respondent

STATEMENT OF POINTS ON APPEAL

Appellant upon this appeal will rely upon the
following points:

I.

That the evidence is insufficient as a matter of
law to support the judgment rendered in favor of
defendant and respondent.

II.

That on all the evidence submitted, the trial court
should have rendered judgment in favor of plaintiff
and appellant.

III.

That the trial court erred as a matter of law in
holding upon the evidence submitted that plaintiff
and appellant was a [171] "person in any manner
interested in the use of a still, etc.", within the
meaning of Title 28, U. S. C. A., Section 1150, Sub-
division (c), paragraph (d).

IV.

That the judgment in favor of defendant and respondent is wholly unsupported by the evidence.

V.

That the findings of fact are wholly unsupported by the evidence.

VI.

That the conclusions of law are erroneous in that they are wholly unsupported by the evidence.

Dated: April 12, 1940.

FAULKNER & O'CONNOR

Attorneys for Appellant

Receipt of a copy of the within Statement of Points on Appeal is hereby admitted this 12th day of April, 1940.

FRANK J. HENNESSY

United States Attorney

By W. F. MATHEWSON

Attorney for Respondent

[Endorsed]: Filed April 12, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PARTS OF THE RECORD
NECESSARY FOR CONSIDERATION OF
APPEAL

Appellant hereby designates the following parts of the record which he deems necessary for a consideration of this appeal:

1. Complaint.
2. Answer.
3. Judgment.
4. Order directing judgment in favor of defendant.
5. Memorandum opinion.
5. Findings of fact and conclusions of law.
6. Plaintiff's proposed findings of fact and conclusions of law.
7. Notice of entry of judgment. [172]
8. Notice of motion for a new trial.
9. Motion for a new trial.
10. Notice of order denying motion for a new trial.
11. Notice of appeal.
12. Cost bond.
13. Stipulation and order re record on appeal.
14. Orders extending time to docket appeal.
15. Stipulation and order for transfer of records, exhibits and reporter's transcript of testimony.
16. Exhibits introduced at the trial.
17. Reporter's transcript of testimony taken at the trial.
18. Certificate of clerk of District Court.
19. Statement of points on appeal.
20. Designation of Parts of the Record necessary for Consideration of Appeal.

Dated: April 12, 1940.

FAULKNER & O'CONNOR

Attorneys for Appellant

Receipt of a copy of the within Designation of Parts of the Record necessary for Consideration of Appeal is hereby admitted this 12th day of April, 1940.

FRANK J. HENNESSY

United States Attorney

By W. F. MATHEWSON

Attorney for Respondent

[Endorsed]: Filed April 12, 1940. Paul P. O'Brien, Clerk. [173]

